



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

FIRST SECTION

CASE OF NORMANTOWICZ v. POLAND

(Application no. 65196/16)

JUDGMENT

Art 3 (substantive) • Positive obligations • Degrading treatment • Adequate medical assistance and care provided to prisoner, with sufficient accommodation of his special needs • Delays in applicant undergoing surgery not due to lack of diligence or deliberate omission of prison authorities • Advisability of continued detention, in view of applicant's health, constantly monitored

STRASBOURG

17 March 2022

FINAL

17/06/2022

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

In the case of Normantowicz v. Poland,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Erik Wennerström,

Ioannis Ktistakis,

Davor Derenčinović, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 65196/16) 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 Rafał Normantowicz (“the applicant”), on 27 October 2016;

the decision to give notice to the Polish Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 22 February 2022,

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

INTRODUCTION

1. The case raises an issue under Article 3 of the Convention in so far as the State authorities did not ensure that the applicant – a special-needs prisoner – received necessary surgery and took more than a year to examine his application for a licence for prison leave, which he had sought on health grounds.

THE FACTS

2. The applicant was born in 1983 and is detained in Szczytno Prison. The applicant was represented by Mr D. Eksterowicz, a lawyer practising in Bydgoszcz.

3. The Government were represented by their Agents, Ms J. Chrzanowska and, subsequently, by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT’S DETENTION AND MEDICAL HISTORY

5. Prior to the period of detention that is the subject of the present application, the applicant, who is a habitual reoffender, had been in prison on

at least one previous occasion – namely, between 2008 and 2011 he served a prison sentence for causing grievous bodily harm. He was later conditionally released.

6. It appears that, starting in 2003, the applicant on several occasions received treatment in psychiatric hospitals in connection with his addiction to various toxic substances.

7. In 2012 the applicant sustained a backbone injury and was diagnosed with spinal disc herniation (*dyskopatia*), spondylolisthesis (*przemieszczenie kręgów*) and chronic back pain syndrome (*przewlekły zespół bólowy*). The applicant underwent rehabilitative treatment.

8. It appears that in 2012 the applicant was certified as a person with a disability. The certificate was valid for three years and it specified that the applicant was fit to do light physical work.

9. It also appears that in 2012 a prison neurosurgeon referred the applicant for surgery to treat the above-mentioned spinal problems. For unknown reasons, the surgery did not take place either in 2012 or in the subsequent years leading up to the applicant's detention in 2014.

10. In September 2014 the applicant was hospitalised with a duodenal ulcer (*choroba wrzodowa dwunastnicy*).

II. CHRONOLOGY OF THE APPLICANT'S DETENTION

11. On 15 September 2014 the applicant resumed serving his prison sentence (see paragraph 5 above), as he had been convicted of committing, while on probation, another criminal offence. On 23 March 2015 the applicant started serving the other sentence.

12. Throughout his detention, the applicant was held in a closed-type detention facility owing to the fact that he was a repeat offender. Exceptionally, from 8 until 19 May 2015 he was classified as suitable for detention in a semi-open detention facility.

13. The applicant was committed to the following detention establishments: from 16 September until 5 October 2014 – Olsztyn Remand Centre; from 6 October until 4 December 2014 – Kamińsk Prison; from 5 until 23 December 2014 – the hospital wing of Barczewo Prison; from 23 December 2014 until 15 May 2015 – the hospital wing of Gdańsk Remand Centre; from 16 until 19 May 2015 – the hospital wing of Barczewo Prison; on 19 May 2015 – Dubliny Prison (a semi-open facility); from 20 May until November 2015 – the hospital wing of Barczewo Prison; around March 2016 – the hospital wing of Gdańsk Remand Centre; around April 2016 – the hospital wing of Barczewo Prison; from October 2016 until 20 January 2017 – the hospital wing of Barczewo Prison; from 20 January 2017 until 17 March 2017 – the hospital wing of Gdańsk Remand Centre; from 17 March until (apparently) 27 March 2017 – Olsztyn Remand Centre; and from (apparently) 27 March 2017 until an unspecified date – Szczytno Remand Centre.

14. In all the above-listed detention establishments, the applicant was either committed to a regular cell, where he slept on the bottom bunk or he was committed to a hospital wing.

III. THE APPLICANT'S MEDICAL CONDITION AND TREATMENT WHILE IN DETENTION

15. In 2014, upon his admission to Olsztyn Remand Centre, the applicant informed the authorities that he suffered from the ailments listed in paragraph 9 above. He also stated that he was suffering from post-traumatic epilepsy. The applicant was given access to painkillers and to anti-epileptic medication and assigned a bottom bunk. Later, in September 2014, the applicant, after complaining about stomach problems and backache, was administered stronger painkillers and other medicines. He was also put on a light diet.

16. Upon his admission to Kamińsk Prison, the applicant was again prescribed an anti-epileptic medicine and put on a light diet. He was also given crutches and, presumably, a stair-climbing aid. At that time, the applicant was not suffering any epileptic seizures. Whenever he complained about back pain, he received painkillers.

17. On 22 October 2014 the prison administration arranged for the applicant to be admitted to a local civilian hospital for backbone surgery, in line with the above-mentioned prison neurosurgeon's 2012 recommendation (see paragraph 9 above). The applicant underwent a medical examination on 4 November 2014 and was instructed to re-establish contact with that neurosurgeon. The administration of Kamińsk Prison arranged for the applicant to see the neurosurgeon on 5 January 2015.

18. In October-November 2014, the applicant was formally diagnosed with epilepsy, in addition to his pre-existing orthopaedic conditions. He was administered painkillers, tranquillisers and anti-epilepsy medicine. In October 2014 the applicant refused to take his morning dose of anti-epilepsy drugs. He was in the process of being prepared for backbone surgery.

19. Because the applicant suddenly suffered acute backache, he was moved to the hospital wing of Barczewo Prison (from 5 until 23 December 2014). He was examined by neurologists, a neurosurgeon, a laryngologist, a gastroenterologist, a psychiatrist, an internist and a general practitioner. Some of those consultations took place in civilian healthcare establishments. In December 2014 he was treated for a urinary tract infection.

20. The report on the monitoring of the applicant's health, issued on 27 January 2015 by Gdańsk Remand Centre's in-house doctor, stated that the applicant had been informed of the possible need for surgery and that to that end he was scheduled for a further magnetic resonance imaging (MRI) scan in February 2015. The report also noted that the applicant's state of health allowed for further diagnoses to be made within the prison healthcare system.

21. A similar report issued in February 2015 stated that the applicant's MRI scan had had to be postponed until March 2015 and that the applicant's condition still allowed for further diagnoses to be made within the prison healthcare system.

22. On 16 March 2015 the applicant had his MRI scan and was examined by a neurosurgeon. In May 2015 the applicant had a computed tomography (CT) scan. Those tests helped to determine the type and the scope of the applicant's herniated disc.

23. On 15 May 2015 the following information was noted in the hospital discharge summary issued by Gdańsk Remand Centre. The applicant had been diagnosed with sciatica (*rwa kulszowa*) and was suspected to be suffering from ulcers. He had received treatment for kidney stone disease (*kamica nerkowa*), insomnia and anxiety disorder. He was walking with the aid of crutches and had reported increasing pain and temporary loss of sensation in his legs. It was recommended that the applicant undergo non-urgent surgery to treat his herniated disc. In accordance with his wishes, multiple requests for admission for surgery had been sent to a hospital in his hometown. No reply had been received as of the date of issue of the summary. The applicant was also advised to have physical therapy; that treatment, however, was not considered essential and the applicant had not consented to it. Lastly, it was recommended that a bottom bunk bed be assigned to the applicant.

24. A report on the monitoring of the applicant's health issued in July 2015 in Barczewo Prison stated that the applicant was being treated for hypertension and mood disorders. Furthermore, in reply to the requests for surgery sent by the prison administration, the Walbrzych State Hospital recommended that the surgery take place in a hospital that specialised in complex backbone surgery. As a consequence, a request for surgery was sent to the State neurosurgery clinic in Olsztyn. It was noted that until the examination scheduled for 29 July 2015, the applicant should receive non-invasive treatment (*leczenie zachowawcze*) in prison.

25. On 10 September 2015 the applicant had another MRI scan.

26. A further report issued in September 2015 in Barczewo Prison stated that the applicant's second examination at the State neurosurgery clinic in Olsztyn had been scheduled for October 2015.

27. A medical certificate issued by a neurosurgeon in October 2015 stated that the applicant's neurological condition had not changed since his previous examination (on an unspecified date) by a doctor and described what specific procedures should be undertaken prior to and during the applicant's (two-phase) surgery.

28. A report on the applicant's health issued on 12 November 2015 in Barczewo Prison (see paragraph 46 below) stated that the first phase of the applicant's surgery was not possible in view of the poor results of laboratory tests – in particular, a urological test of 10 November 2015. The applicant

was scheduled to have a urological examination on 13 November 2015. He was also being treated for hypertension and chronic gastritis.

29. The applicant underwent further urological tests on 18 November and 2 December 2015, and on 8 January 2016.

30. On 25 December 2015 the applicant attempted to commit suicide. The case file does not contain any further information in this respect. The Government submitted that the applicant's suicide had been staged in order to pressure the authorities into granting him leave from prison. The applicant did not suffer any injuries. As a follow-up procedure, the applicant was placed in a monitored cell, and on 27 December 2015 he was issued with a "special card warning" stating that he was a suicidal prisoner. The applicant did not contest the Government's submissions.

31. On 11 February 2016 the applicant obtained a certificate from the hospital wing of Gdańsk Remand Centre which confirmed the previous diagnoses and stated that the applicant was also suffering from depression. The certificate contained a recommendation that non-urgent surgery for the applicant's herniated disc be scheduled.

32. On 22 February 2016 two court-appointed independent experts drew up a report to assess whether or not the applicant was fit for detention in view of his ailments. The experts, having examined the applicant, as well as his medical records, recommended that the applicant undergo surgery on his backbone. They also stated that keeping the applicant detained until then would not threaten his life or health. Lastly, the experts' report recommended that, in the period leading up to the surgery, the applicant should use a bottom bunk, receive medicines and be exempted from physical activities in prison. After the surgery, the applicant should be granted a three-month-long leave from prison in order to undergo rehabilitation. At the time of being examined for the purpose of the present report, the applicant was using crutches to walk.

33. On 14 March 2016 the applicant was certified as having a marked degree of disability (*znaczny stopień inwalidztwa*) requiring permanent or long-term care and the aid of another person.

34. According to the Government, the applicant's blood-test results did not permit surgery in 2016. Internal inflammation was suspected, but the applicant refused to take medicines prescribed for that ailment. In that regard, the applicant was examined by a laryngologist and a dentist. The applicant refused to undergo further tests scheduled for May 2016 or to take medicines prescribed.

35. On 11 May 2016 the applicant, who had complained about bleeding from his anus, was scheduled to undergo a colonoscopy. The examination did not take place because the applicant, despite receiving the necessary preparatory instructions and the appropriate medicine having been administered to him, had failed to swallow that medicine and otherwise properly prepare for the examination. The applicant (who was in the process

of moving prisons) told the authorities that he would take up the matter of a new date for his colonoscopy with the administration of Barczewo Prison.

36. On 15 September 2016 the prison authorities contacted Olsztyn State Hospital to sign the applicant up for surgery. The surgery was ultimately scheduled for 11 May 2017, but that was conditional upon the applicant receiving good blood-test results.

37. The Government submitted that in preparation for the surgery, the applicant had undergone a series of blood tests, which had yielded contradictory results (depending on whether the applicant had or had not been informed of the test beforehand). The Government expressed the suspicion that when the applicant had known of an impending blood test he had skewed the results thereof by eating, despite having been expressly told to take the test on an empty stomach.

38. On 10 January 2017 two court-appointed experts certified that the applicant was partially and temporarily unfit for work, in view of his orthopaedic condition.

39. On 31 January 2017 an order was given that the applicant was to undergo physical therapy in Gdańsk Remand Centre's rehabilitation hospital.

40. According to the most recent information provided to the Court, the applicant's surgery in Olsztyn State Hospital was scheduled for 11 February 2018. It was later rescheduled for July 2018.

41. The applicant began his detention in 2014 using crutches and a stair-climbing aid; in 2016, he became confined to a wheelchair. The applicant, without making any comments, submitted a handwritten note dated 17 March 2017 in which a fellow prisoner stated that, in Olsztyn Prison, he had been assisting the applicant in his daily routine by, for example, helping him to get dressed, fetching his meals or helping him to sit on the toilet. The Government denied that the applicant had been dependent on his fellow inmates (see paragraph 77 below).

42. Throughout his detention, the applicant was also subject to monitoring by in-house psychologists and psychiatrists. In order to help him to address his aggressive attitude, the applicant received special anger-management therapy.

IV. PROCEEDINGS FOR A LICENCE FOR PRISON LEAVE

A. First application for a licence for leave

43. On 14 May 2015 the applicant, who was at that time detained in Gdańsk Remand Centre, lodged an application for a licence for leave (also known as a "short break" in the execution of a sentence – *przerwa w odbywaniu kary pozbawienia wolności*) on health grounds. That application was registered with the Gdańsk Regional Court under decision no. VI Kow 2124/15/pr.

44. On 2 June 2015 the Gdańsk Regional Court declared that it had no jurisdiction to examine the application, as the applicant was not detained in the region. The case was referred to the Olsztyn Regional Court.

45. On 2 June 2015, when the applicant was detained in Barczewo Prison, the applicant's lawyer lodged a similar application on the applicant's behalf, this time with the Olsztyn Regional Court. The lawyer enumerated the applicant's ailments and argued that they were severe enough to render him unfit for detention. In particular, the applicant could only walk with crutches, wore incontinence pads and was completely dependent on his fellow inmates. The prison system did not provide him with adequate medical monitoring by specialists, treatment or physical rehabilitation, and that was causing his health to deteriorate and was increasing his suffering. The lawyer noted that the applicant's surgery was scheduled for 2017 and argued that, in the meantime, he should receive treatment at a civilian clinic in Olsztyn, but that ultimately the surgery should be brought forward. The lawyer maintained that the applicant was in an inhumane situation, that his health was rapidly deteriorating, and that he was not able to move around and to reach the prison telephone in order to contact his family. The lawyer asked that an expert report be ordered in order to assess the applicant's state of health and need for surgery and the consequences of delaying that surgery. Lastly, she asked that, in view of the applicant's state of health, the court hearing be scheduled as soon as possible.

46. On 26 June 2015 the court decided not to grant the applicant an exemption from court fees. On 14 July 2015 the court obtained a report from Barczewo Prison, which stated that, until the surgery, it was feasible for the applicant to receive adequate medical treatment in prison. Pursuant to the prosecutor's request, on 17 September 2015 the court obtained an additional report from Barczewo Prison in respect of the applicant's health. On 13 October 2015 the court held a hearing in the presence of the applicant. The court was informed that the applicant had a medical examination scheduled for 29 October 2015. On 27 October 2015 the court obtained a social enquiry report (*wywiad środowiskowy*) that had been requested by the applicant's lawyer. On 12 November 2015 a new report on the applicant's health was drawn up by Barczewo Prison. On 24 November 2015 the court ordered that a report about the applicant's health be prepared within thirty days by an independent expert. In the light of a conflict of interest that emerged in respect of one expert, on 4 December 2015 the court ordered that the report be prepared by another team of medical experts. The report was submitted to the court on 22 February 2016, having been drawn up – on the basis of an examination of the applicant and an analysis of his medical records – by court-appointed experts, a neurosurgeon and a forensic medicine specialist from the Forensic Medicine Institute in Bydgoszcz,.

47. The experts concluded that the applicant should undergo surgery to remove his herniated disc but that his detention whilst awaiting that surgery

would not pose any risk to life or health. They recommended that the applicant be assigned a bottom bunk bed and the necessary pharmacological treatment, and that after the surgery he be granted a three-month leave from prison in order to undergo physical rehabilitation. As stated in the report, at the relevant time the applicant was using crutches and wearing incontinence pads.

48. On 3 March 2016 the Olsztyn Regional Court declared that it no longer had jurisdiction to continue examining the request lodged by the applicant, as the latter had been moved to Gdańsk Remand Centre.

49. On 22 and on 30 March 2016 the Gdańsk Regional Court obtained two reports from the Gdańsk Remand Centre concerning the applicant's health; both reports reiterated that it was feasible for him to receive adequate medical treatment in prison.

50. On 29 March 2016 the court was informed that Olsztyn State Hospital had scheduled the applicant's surgery for 16 April 2016.

51. On 1 April 2016 the Gdańsk Regional Court declared that it no longer had jurisdiction to examine the applicant's request for leave, as the applicant had again moved prisons.

52. On 21 April 2016 the new court obtained information from the prison administration that the applicant could receive adequate medical treatment in prison, but that he was not fit for surgery as his blood parameters were abnormal.

53. On 11 May 2016 the Olsztyn Regional Court (*Sąd Okręgowy*) held a hearing in Barczewo Prison. The hearing was attended by the applicant, who, by that time, was confined to a wheelchair. The applicant was presented with the expert report on his health prepared on 22 February 2016 by the Forensic Medicine Institute in Bydgoszcz. He presented a medical certificate (of an unspecified nature) and asked to be given a medical check-up.

54. On the same date the court delivered its decision, refusing to grant the licence for leave sought by the applicant. The Government submitted that the Court had found that the applicant had not been fit for surgery in the light of his blood results, but that he could be otherwise treated in prison. The Court is not in possession of a copy of the court's decision.

55. On 16 May 2016 the applicant appealed, stating that he was suffering from severe and chronic disorders, that he had to use a wheelchair and that his pain caused him a lot of suffering. He argued that Barczewo Prison was not adapted for special-needs prisoners, that adequate medical care was not guaranteed to him there and that he needed to undergo surgery in a civilian hospital. He attached medical certificates dated 27 January 2015 and 21 April 2016.

56. On 4 July 2016 the Białystok Court of Appeal upheld the lower court's decision, observing that a licence for leave could only be granted if the illness of the prisoner in question was so severe that continuing his detention would cause danger to life or health. The court found that the evidence obtained in

the case clearly showed that no such risk existed in the applicant's case. In particular, the expert report unequivocally stated that the applicant could remain in prison and await his surgery and receive appropriate medical treatment there; in fact, he was provided with medicines, including antidepressants.

57. On 10 June 2016 the Białystok Court of Appeal dismissed a complaint lodged by the applicant under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) about the unreasonable length of the proceedings concerning his application for a licence for leave. The court considered that the delay that had marked the impugned proceedings had been caused by the applicant's two hospitalisations and the resultant change of jurisdiction and the transfer of the case file between courts in different cities. The court also noted that the case had been complex and had required the assessment of medical records, which could not have been obtained without some delay.

B. Second application for a licence for leave

58. On an unspecified date the applicant lodged a new application for a licence for leave. He argued that such leave would allow him to undergo the medical treatment necessary to cure his internal inflammation and to render him fit for his backbone surgery.

59. On 28 December 2016 the Olsztyn Regional Court decided not to grant the licence sought. No copy of that decision has been submitted to the Court. It appears from other case material that in reaching its decision the court relied on a report drawn up by independent medical experts.

60. On 8 February 2017 the Białystok Court of Appeal dismissed an interlocutory appeal (*zażalenie*) lodged by the applicant against the first-instance decision. The court held that, in the light of the case-material, the provision of adequate medical treatment and effective preparation for the applicant's surgery could be ensured in prison.

V. RELATED PROCEEDINGS AGAINST PRISON DOCTORS

61. On 3 June 2015 the applicant brought a civil action against a prison doctor in the Olsztyn District Court. Those proceedings are ongoing.

62. It appears that the applicant also instituted disciplinary proceedings against the prison doctor (alleging medical malpractice) with the Regional Attorney for Professional Liability (*Okręgowy Rzecznik Odpowiedzialności Zawodowej*). No further information has been provided in that regard.

VI. OTHER DEVELOPMENTS

63. On 19 June 2016 the applicant was involved in a physical confrontation with a cellmate. The Government submitted that the applicant had broken the sink and fractured the inmate's skull.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

64. The provisions pertaining to medical care in detention facilities and general conditions of detention, together with the relevant domestic law and practice, are set out in the Court's judgments 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, §§ 74-85, 13 October 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65. The applicant complained under Article 3 of the Convention that the State authorities had failed to ensure timely surgery to treat his spinal condition, which had caused irreversible health consequences (such as his being confined to a wheelchair). He also complained under the same provision that the State authorities had not granted him leave from prison, despite his unfitness for detention. In connection with the first set of proceedings concerning his application for a licence for leave, the applicant also complained, citing Article 6 of the Convention, that the authorities had not decided on that application with due speed.

66. The Court, being the master of characterisation to be given in law to the facts of the case, considers that all the above-described elements of the complaint fall to be cumulatively examined under Article 3 of the Convention (see *Radomilja and others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

67. 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

1. The parties' submissions

68. The Government raised a preliminary objection “under Article 6 in conjunction with Articles 13 and 3 of the Convention” to the effect that the complaint was inadmissible for non-exhaustion of domestic remedies. In so far as the applicant might have had (in respect of his detention) any grievances

related to his civil rights, an effective remedy had been available and indeed had been pursued by him. The applicant's civil action against the doctor of Barczewo Prison (see paragraph 61 above), however, was still pending before the domestic court. That fact, in the Government's view, rendered the applicant's complaint inadmissible for being premature.

69. The Government also argued that the Article 3 complaint was manifestly ill-founded because the applicant had received adequate medical care in prison and had, at all times, been fit for detention.

70. The applicant did not comment on the Government's argument that the case was inadmissible for non-exhaustion of domestic remedies. As for the remainder of the Government's arguments, he submitted that throughout his detention, he had not received adequate medical treatment and care, and that, essentially, the authorities had not ensured his timely release.

2. *The Court's assessment*

71. Regarding the issue of the allegedly premature nature of the applicant's Article 3 complaint, the Court observes that the applicant raised an arguable claim (both before the domestic courts and before the Court) regarding the inadequacy of the medical care that he had received while in detention and about his unfitness for detention. Within this context, the Court reiterates (citing its previous rulings in Polish cases) that no civil action against a prison or a prison doctor can offer a detainee reasonable and timely prospects of securing more adequate medical care or his or her release from detention (see, *mutatis mutandis*, *Kaprykowski*, cited above, §§ 54-57; *Kulikowski v. Poland* (no. 2), no. 16831/07, § 52, 9 October 2012; *Zarzycki v. Poland*, no. 15351/03, § 89, 12 March 2013; and *Sławomir Musiał*, cited above, § 77). The Court has already held, within the context of conditions and medical care in prison, that remedies of a purely compensatory nature can be regarded as effective only in respect of applicants who have either been released or placed in conditions that meet Convention standards (see *Orchowski*, cited above, §§ 108 and 109). Moreover, as well illustrated by the applicant's own civil action, civil courts do not act fast enough to provide a meaningful legal avenue for a prisoner seeking an improvement in the status quo (see, *mutatis mutandis*, the above-cited cases of *Kaprykowski*, § 54-56, and *Sławomir Musiał*, §§ 77 and 82; also contrast, *Nocha v. Poland* (dec.), no. 21116/09, 27 September 2011).

72. In view of the above, the Court considers that the application for a licence for leave constituted an adequate (and indeed the only) remedy to be exhausted by the applicant in respect of the case at hand. Having pursued, until the end, his first application for a licence for leave, the applicant was not required to wait until the end of the civil proceedings initiated by him against Barczewo Prison's doctor in order to lodge his application with the Court.

73. Regarding the issue of whether the complaint is manifestly-ill founded, the Court notes that this part of the application is factually complex

in so far as it concerns substantiated allegations of unfitness for detention and the alleged inadequacy of the medical care provided to the applicant – a special-needs prisoner, who, during his detention, suffered from serious health conditions that had either already existed prior to his detention or appeared and developed after the start of his detention.

74. It cannot be said that a preliminary examination of the substance of the case clearly discloses no appearance of a violation of the applicant's rights, as guaranteed by Article 3 of the Convention. As such, in the Court's view, this complaint cannot be declared inadmissible at the outset without proceeding to a formal examination on the merits (see *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Ślawomir Musiał*, cited above; *Kaprykowski*, cited above, § 69; *D.G. v. Poland*, no. 45705/07, 12 February 2013; and *Zarzycki*, cited above).

75. It follows that this complaint is not manifestly ill-founded and cannot be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention and must therefore be declared admissible.

B. Merits

1. The parties' submissions

76. The applicant complained that throughout his detention, he had not received adequate medical treatment and care. As a result, his orthopaedic condition had worsened to the point that he had become confined to a wheelchair. He also submitted that the proceedings concerning his application for the licence for leave (which he had sought on health grounds) had been marked by unreasonable delays.

77. The Government argued that the medical treatment, care and material conditions offered to the applicant during his detention had been adequate. All prison authorities had always accommodated the applicant's special needs. In particular, the applicant had been furnished with crutches, stair-climbing aid and, later on, a wheelchair. The applicant had been fit enough to attend court hearings and to get into a fight with an inmate. The applicant had not been dependent on his fellow inmates. The hardships which the applicant might have experienced had not exceeded the unavoidable level of suffering that was inherent, on the one hand, in detention, and, on the other hand, in a serious chronic illness such as that suffered by the applicant.

78. The Government argued that the length of the proceedings relating to the applicant's application for a licence for leave reflected the exceptional nature of the applicant's case. Firstly, the work of the domestic courts had been affected by the applicant's hospitalisations and the resulting change of court jurisdiction (together with the attendant transfer of the case file). Secondly, the case had required an assessment of medical records that were complex and had to be kept up to date. Thirdly, the courts had had to order, and then wait for, a report to be drawn up by independent experts. As regards

the latter, the Government emphasised that the court had not been able to obtain the report from the team of experts that it had chosen owing to a conflict of interest that had emerged in respect of one of those experts. It had then had to ask a different team to prepare the report. The court made attempts to speed up the process by imposing a thirty-day limit for the presentation of the report. In the light of the experts' workload, however, the time-limit could not be met.

2. *The Court's assessment*

(a) **General principles**

79. The Court reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him or her to a civil hospital – even if he is suffering from an illness that is particularly difficult to treat (see, *inter alia*, *Śławomir Musiał*, cited above, § 86). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, their being provided with the requisite medical assistance (see *Kudła*, cited above, § 94; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; *Śławomir Musiał*, cited above, § 86; and *Kaprykowski*, cited above, § 69).

80. There are three particular elements to be considered with regard to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel*, cited above, §§ 40-42; *Sakkopoulos v. Greece*, no. 61828/00, § 39, 15 January 2004; and *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006).

81. The authorities must also ensure that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy that seeks, to the extent possible, to cure the detainee's diseases or to avoid aggravating them, rather than to address them on a symptomatic basis (see, among many other authorities, *Mikalauskas v. Malta*, no. 4458/10, § 63, 23 July 2013). Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability (see *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004, and *Zarzycki*, cited above, § 102).

(b) Application of the above principles to the present case

(i) The applicant's medical condition

82. As to the prisoner's health condition, the Court observes that the applicant suffers from a herniated disc, spondylolisthesis and chronic back pain syndrome (see paragraph 7 above). The applicant's complaint refers mainly to these conditions. The Court will also take account of the fact that, over time, the applicant was additionally diagnosed with the following short-term or chronic ailments: ulcers, epilepsy, urinary tract infection, sciatica, kidney stone disease, insomnia, anxiety disorder, hypertension, mood disorders and depression (paragraphs 10, 18, 19, 23, 24, 31, 35 above).

83. In late 2014 the applicant started using crutches and a stair walker (see paragraph 16 above). On an unspecified time, around May 2016, he became confined to a wheelchair (see paragraph 53 above).

(ii) The adequacy of medical assistance and care provided to the applicant in detention

84. As regards the adequacy of the medical care provided to the applicant in detention, the Court firstly observes that in 2012 it was for the first time recommended that the applicant should undergo spinal surgery (see paragraph 9 above). The procedure continued to be recommended throughout the applicant's detention. It was never considered that the need for surgery was urgent (see paragraphs 20, 21, 23, 31 and 32, above). Secondly, the applicant received a medical recommendation that he sleep in a bottom bunk, be exempted from physical work or effort, and be put on a light diet (see paragraphs 23, 32 and 47 above). Thirdly, the applicant was prescribed various medicines and, on one occasion, physical therapy (see paragraphs 15, 18, 34, 56).

85. The Court notes that during his detention the applicant was mainly committed to prison hospital wings, where his special needs were met. Whenever he was committed to a regular cell, he was assigned to a bottom bunk, as per medical recommendations (see paragraphs 14 and 15 above). Moreover, the applicant received a light diet and was administered the medicines specified in the medical prescriptions issued to him, which were regularly reviewed (see paragraphs 15, 16, above). The physical therapy that was recommended as non-essential treatment was ultimately not carried out because the applicant did not consent to it (see paragraph 23 above).

86. Conversely, the recommendation that the applicant undergo backbone surgery was not complied with. In the Court's view, however, that outcome was not caused by a lack of diligence or a deliberate omission on the part of the prison authorities. As to the latter, the Court reiterates that "[a]lthough the purpose of [the particular] treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there

has been no violation of Article 3” (see, in the context of health care, *Sarban v. Moldova*, no. 3456/05, § 75, 4 October 2005; see also, in the general conditions-of-detention context, *Muršić v. Croatia* [GC], no. 7334/13, § 100, 20 October 2016).

87. In that regard, the Court observes that the authorities at each of the detention establishments in which the applicant was held were active in seeking to have the applicant admitted for surgery in a specialised civilian hospital (see paragraphs 17, 23, 24, 37, 39 and 40 above).

88. Moreover, they ensured that the necessary diagnostic procedures were followed in order to prepare the applicant for surgery. In particular, the applicant underwent two MRI scans and one CT scan (see paragraphs 22 and 25 above). He also underwent multiple laboratory tests and examinations administered by various specialists – including orthopaedists, neurologists and neurosurgeons (see paragraphs 17, 18, 19, 22, 26, 28, 29, 34 and 37 above). A number of the applicant’s examinations took place in civilian medical establishments (see paragraph 19 above). In 2015, two reports concerning the applicant’s health expressly confirmed that further diagnoses in respect of his health could be made within the prison healthcare system (see paragraphs 20 and 21 above). No document was issued indicating the contrary.

89. The Court acknowledges that the applicant’s diagnostic process was lengthy. In the Court’s view, however, this was because the applicant had, in the meantime, to be examined or treated for new ailments, such as epilepsy (see paragraph 18 above). He also suffered acute back pain, which required his transfer to a different prison infirmary (see paragraph 19 above). Lastly, the applicant developed a urinary tract infection (see paragraph 19 *in fine*, above) and showed symptoms of further internal inflammation, which called for thorough medical examinations (see paragraphs 34 and 58 above).

90. Given these objective complications, the Court does not find it established that the detailed planning of the applicant’s multi-phase treatment could have been put in place sooner than it actually was – that is to say in October 2015 (see paragraph 27 above).

91. The Court also observes that the first-phase surgery was postponed owing to an independent factor – namely the applicant’s urological condition (see paragraphs 28 and 29 above). That illness was monitored with the utmost frequency until at least January 2016 (see paragraph 34 above).

92. Additionally, the applicant had to be treated for hypertension and chronic gastritis (see paragraph 28 above), as well as depression (see paragraph 31 above), recurring inflammation (see paragraph 34 above), and ulcers (see paragraph 35 above).

93. In the absence of any rebuttal or explanation from the applicant, the Court accepts the Government’s submission that the applicant had later impeded the authorities from affording him adequate medical care. In particular, in May 2016, the applicant refused to take medicines prescribed

for his internal inflammation and to undergo further tests that were necessary by way of preparation for his scheduled surgery (see paragraph 34 above). He also clearly undermined the authorities' efforts to treat his ulcers in that, despite clear medical instructions, he did not prepare for a scheduled colonoscopy (see paragraph 35 above). Lastly, in subsequent months, the applicant appeared to intentionally skew his laboratory results, thus rendering it impossible to undertake the planned spinal surgery, which consequently had to be continually rescheduled (see paragraphs 36 and 37 above).

94. In the light of the above elements, the Court concludes that the authorities made consistent and serious efforts to ensure that the applicant could receive surgery. The procedure had to be continually postponed over the years owing to (i) a series of independent developments, such as the necessity to diagnose and treat the applicant's additional ailments, and (ii) the applicant's own attitude, which undermined the authorities' actions. It follows that the delay in the applicant undergoing surgery, albeit significant, was not attributable to the authorities but rather to independent factors and unpredictable developments. Overall, during the applicant's detention, the authorities ensured adequate medical treatment not only in respect of his pre-existing spinal ailments but also all his remaining internal and mental disorders.

95. Moreover, the Court considers that the applicant's special needs were sufficiently accommodated in prison. He was furnished with crutches, a stair-climbing aid, and ultimately a wheelchair. He spent most of his time in hospital wings, where infirmary care was ensured. As for the shorter periods of detention in regular cells, the Court does not find it established that the applicant had to rely on his fellow inmates for helping in undertaking his daily activities.

(iii) The advisability of maintaining the detention measure in view of the applicant's state of health

96. The last point to be addressed by the Court is that of whether – given the impossibility of having the applicant operated on, and given his multiple ailments and physical disability – the applicant was fit for continued incarceration. In this regard, the Court must assess not only the substantive elements but also the adequacy of the procedure for reviewing the applicant's fitness for detention – in particular, the speediness with which the authorities examined his first request for a licence for leave (see paragraphs 43-57 above).

97. The Court notes that the authorities constantly monitored the course of the applicant's illnesses and reviewed the advisability of his continued detention. In particular, apart from the 2015 reports (which have been mentioned earlier; see paragraphs 20 and 21 above), on 22 February 2016 two independent experts drew up a report which state that keeping the applicant detained did not threaten his life or health (see paragraphs 32, 46 *in fine* and 47 above).

98. The Court also observes that the argument that the applicant was not fit for detention was duly examined by the domestic courts in the course of the proceedings concerning his application for a licence for leave.

99. In the first set of those proceedings, the courts relied on three separate reports produced by independent medical experts, on additional reports regarding the applicant provided by Gdańsk Remand Centre (see paragraphs 46, 49 and 52 above), and on the material obtained directly from the applicant at the hearings. The first- and second-instance courts consistently held that the applicant's life or health was not threatened and that his release from detention was not called for (see paragraphs 54 and 56 above).

100. In these the circumstances, the Court does not take issue with the merits of the authorities' decision, delivered during the first set of the impugned proceedings, not to grant the applicant a licence for leave. Their reasons were indeed relevant and sufficient.

101. The Court, however, cannot disregard the fact that almost fourteen months passed between the time when the applicant first asked for a licence for leave and the final judicial decision regarding this matter (see paragraphs 43 and 57 above).

102. Given the State's duty of care and its obligation to ensure that the applicant (a special-needs prisoner) did not suffer treatment contrary to Article 3 of the Convention in view of his alleged unfitness for detention (see paragraphs 74 and 75 above), the authorities were required to ensure a speedy judicial review of the applicant's application for a licence for leave.

103. The Court considers that taking more than one year to decide on such an inherently urgent request was, in principle, not compatible with the requirements of Article 3. It must therefore be examined whether any exceptional circumstances existed in the case that would justify the protraction of the proceedings in question.

104. The Government acknowledged that the impugned proceedings had been lengthy. They argued, however, that the delay in reviewing the applicant's first application for leave was attributable to the applicant being transferred between prison establishments located in two different administrative regions. Moreover, the case had required an assessment of medical records that were complex and had to be kept up-to-date (see paragraphs 77 and 78 above).

105. The Court notes that a change of court jurisdiction (owing to a transfer of the applicant) occurred three times – namely, on 2 June 2015, 3 March 2016 and 1 April 2016 (see paragraphs 44, 48, and 51 above). The site of actual court hearings followed the applicant when he was transferred between Barczewo and Gdańsk (see paragraph 13 above).

106. In the light of the available material and its finding that the applicant had received adequate medical treatment during his detention (see paragraph 94 above), the Court accepts that the applicant's various transfers were necessary in order to ensure adequate specialised treatment of his

ever-developing ailments. It also observes that the applicant's overall state of health was serious and that the transfers were aimed at facilitating not only short-term remedies for particular illnesses but also a long-term improvement in the applicant's physical well-being and thus rendering him fit for his spinal surgery. Given the circumstances, the resulting repercussions for the proceedings concerning the applicant's application for a licence for leave were, inevitably, of secondary importance, especially given that the applicant's fitness for detention was monitored at all times (see paragraphs 97-100 above).

107. Furthermore, between the shifts in jurisdiction, the courts acted with diligence and without undue delays. For example, in 2015, the court handling the case obtained from the Barczewo Prison authorities three updated reports regarding the applicant's changing state of health and a copy of a social inquiry report that had been requested by the applicant's lawyer. It also held a hearing in the presence of the applicant (see paragraph 46 above). By the end of that year, that court, doing its utmost to secure objective evidence, was faced with a series of obstacles to it obtaining a report from medical experts not affiliated with the prison system. In the Court's view, the domestic court was proactive in seeking to obtain the report in the shortest time possible (see paragraph 46 above). In 2016 – within the same month in which it received the case – the next court to which the case was transferred obtained additional reports on his health from Gdańsk Remand Centre (see paragraph 49 above). When in April 2016 the applicant's case was again transferred to Olsztyn Regional Court, that court, within six weeks, obtained an updated report on the applicant's health, held a hearing in Gdańsk Remand Centre and closed the case, issuing its ruling (see paragraphs 52-54 above).

108. The Court considers that the first-instance proceedings in respect of the applicant's first request for a licence for leave were completed as quickly as possible, given the series of objective obstacles that arose (which the prison authorities could not have avoided) and given the complexity of the case.

109. Following the applicant's appeal, the Białystok Court of Appeal took approximately six weeks to issue the final ruling in the case. The appeal required a reassessment of numerous medical reports and certificates, as well as the submissions that had been made in the lower-instance court (see paragraphs 55 and 56 above). In view of this, the Court accepts that the length of the appeal proceedings was not unreasonable.

110. Overall, the Court does not find any element in the case that would call into question the decision of the Białystok Court of Appeal to dismiss the applicant's complaint regarding a breach of his right to a trial within a reasonable time (see paragraph 57 above).

111. All the above-mentioned efforts to provide the applicant with medical care demonstrate that the State authorities have shown sufficient care in taking appropriate action to ensure that the applicant underwent surgery at a civilian hospital that specialised in complex spinal ailments. They were also

attentive to and constantly monitored the applicant's other, numerous medical conditions. In their view, the applicant received appropriate medical care in detention and the Court sees no reason to find otherwise. The authorities actively assisted the applicant by seeking to have his ailments treated – often against the applicant's own wishes. On the basis of the evidence before it, the Court does not find that the medical care provided to the applicant was deficient or below the standard level of health care available to the general population, or that the courts examining the applicant's request for leave made a manifest error of judgment (see *Wołkowicz v. Poland* (dec.), no. 34739/13, § 110, 7 March 2017). Lastly, the authorities duly examined the question of the applicant's fitness for detention and decided on his first application for a licence for leave as quickly as was possible, given the exceptional circumstances described above.

(iv) *Conclusion*

112. Having regard to the above, the Court concludes that the authorities provided the applicant with adequate medical care and made sufficient efforts to reasonably accommodate the special needs resulting from his disability. They also constantly monitored the advisability of holding the applicant in detention.

113. There has accordingly been no violation of Article 3 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

114. The applicant also complained of the unreasonable length of the proceedings in respect of his application for a licence for leave. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

115. The Government argued that the complaint was *ratione materiae* incompatible with Article 6 of the Convention. In particular, by lodging an application for the issuance of a licence for leave, the applicant had merely sought to be granted a short break in the execution of his sentence, and not the improvement of his medical care or the material conditions of his detention. Because the Convention did not guarantee any right to be released from prison, the impugned proceedings did not concern a civil right, within the meaning of Article 6 of the Convention.

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

117. The Court reiterates that the applicant's complaint under Article 3 of the Convention concerns both his allegations of the inadequacy of his medical care in prison and the lack of a timely review of his alleged unfitness for

detention within the framework of his application for a licence for leave (see paragraphs 65 and 76 above). These issues have been examined and have resulted in the finding that no violation of that provision had occurred (see paragraphs 82-113 above). Given the circumstances, the Court considers that, leaving aside the questions regarding the applicability of Article 6 the Convention, there is no need to examine separately this complaint (see *Pugžlys*, §§ 64-65 and 93-96; *Paluch*, §§ 46-48 and 49-52; *Prus*, §§ 37-38 and 40-43; and *Świderski v. Poland*, §§ 62- 63 and 65-68, all cited above).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that it is not necessary to examine the applicant's complaint under Article 6 § 1 of the Convention.

Done in English, and notified in writing on 17 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President