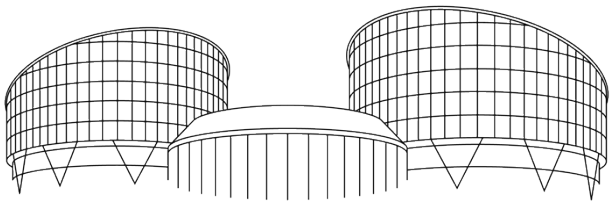

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PIECHOWICZ v. POLAND

(Application no. 20071/07)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

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

In the case of Piechowicz v. Poland**,**

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

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 20071/07) 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 Mirosław Piechowicz ("the applicant"), on 12 April 2007.

2. The applicant was represented by Mr W. Więcław, a lawyer practising in Lublin. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a violation of Article 3 of the Convention on account of the imposition of the so-called "dangerous detainee" regime on him and inadequate conditions of his detention. He further submitted that the length of his pre-trial detention was excessive, in breach of Article 5 § 3. Invoking Article 5 § 4, the applicant complained that in the proceedings concerning the lawfulness of his detention during the investigation the principle of equality of arms had not been respected. The applicant also alleged a breach of Article 8 in that during his detention his contact with his family had been severely restricted and his correspondence had been routinely censored.

4. On 26 October 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 18 February 2010 the President of the Chamber granted the Helsinki Foundation for Human Rights leave to submit written comments, in accordance with Rule 44 § 3 (b) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1977 and lives in Lublin.

A. Partial disagreement as to certain facts of the case

7. The applicant and the Government gave partly different statements in respect of certain facts of the case concerning the "dangerous detainee" regime, the conditions of the applicant's detention and his contact with his family during his detention (see paragraphs 54-71 and 87-98 below). The remaining facts were not in dispute.

B. First set of criminal proceedings (case no. IX K 1054/07; no IX K 31/11)

8. On 21 June 2006 the applicant was arrested on suspicion of drug trafficking committed together with other identified and yet unidentified persons.

9. On 22 June 2006 the Lublin District Court (*Sąd Rejonowy*) remanded him in custody, relying on the reasonable suspicion that he had committed the offence in question. It attached importance to the likelihood of a severe sentence of imprisonment being imposed on the applicant and the risk that he would attempt to obstruct the proceedings by bringing to bear pressure on – unspecified – witnesses and co-suspects, in order to create favourable conditions for his defence.

10. An appeal by the applicant against the detention order and further decisions extending his detention, and his numerous applications for release and appeals against refusals to release him, were all unsuccessful.

11. In the course of the investigation, the applicant's detention was extended on 15 September 2006 (to 20 December 2006) and 5 January 2007 (to 14 April 2007). In their decisions on the matter the authorities relied on the original grounds given for his detention. The courts also stressed that, owing to the complexity of the case, the investigation had still not been completed.

12. On 4 April 2007 a bill of indictment was lodged with the Lublin District Court. The applicant was charged with drug trafficking, attempted money laundering and obtaining a loan by deception.

A.W., the applicant's common-law wife (*konkubina*), was indicted on a charge of attempted money laundering in that she had attempted to invest the proceeds of crime received by the applicant from drug trafficking in the

purchase of a car and entering into a bank loan agreement in order to conceal the criminal origins of the invested money.

13. On 10 April 2007 the District Court prolonged the applicant's detention until 14 July 2007 and then, on the latter date, until 14 October 2007. The courts repeated the original grounds for his detention.

14. On 17 July 2007 the Lublin District Court made a severance order referring part of the charges to the Lublin Regional Court (*Sąd Okręgowy*). Both the prosecutor and the applicant lodged interlocutory appeals against that decision.

15. On 16 August 2007 the case in its entirety was referred to the Lublin Regional Court. However, on account of the subsequent amendment to the provisions governing the jurisdiction of criminal courts, the case was eventually referred back to the District Court on 30 October 2007.

16. In the meantime, on 9 October 2007, the Lublin Regional Court had further extended the applicant's detention until 14 January 2008, holding that evidence so far gathered sufficiently supported the suspicion that he had committed the offences with which he had been charged. It stressed the likelihood of a severe sentence of imprisonment being imposed on the applicant and the fact that he was a recidivist offender.

17. During the court proceedings the applicant's detention pending trial was extended on several occasions, namely on 28 December 2007 (to 14 April 2008), 11 April 2008 (to 30 June 2008), 27 June 2008 (to 30 September 2008), 23 July 2008 (to 24 October 2008). The courts repeated the grounds that had previously been given for keeping him in custody.

18. The trial was to start on 28 December 2007 but it was adjourned until 22 February 2008 due to the absence of one of the witnesses.

19. On 22 February 2008 the trial was again adjourned because the presiding judge was ill.

20. The first hearing was held on 28 March 2008.

21. On 24 October 2008 the District Court decided that the applicant's detention should no longer be continued but he remained in custody in the third set of criminal proceedings (see paragraphs 32-39 below).

22. On 12 July 2011 the Lublin District Court convicted the applicant as charged and sentenced him to a cumulative penalty of five years' imprisonment and a fine.

A.W. was convicted as charged and sentenced to two years' imprisonment on four-year probation.

23. The proceedings are pending the parties' appeals.

C. Second set of criminal proceedings (case no. IV K 413/06)

24. On 22 June 2006 the Lublin District Court remanded the applicant in custody, relying on the reasonable suspicion of his having committed robbery, theft and unlawful detention. It attached importance to the likelihood of a severe sentence of imprisonment being imposed on the applicant and the risk that he would attempt to obstruct the proceedings by bringing pressure to bear on witnesses and co-suspects in general – their names or any related circumstances were not specified.

25. An appeal by the applicant against the detention order, and likewise his further appeals against decisions extending his detention and all his subsequent applications for release and appeals against refusals to release him were unsuccessful.

26. In the course of the investigation, the applicant's detention was extended on 7 September 2006 (to 30 December 2006) and 29 December 2006. In their decisions on the matter the authorities relied on the original grounds given for holding him in custody.

27. On an unspecified date in December 2006 a bill of indictment was lodged with the Lublin District Court. The applicant was indicted on charges of robbery, theft and unlawful detention.

28. The first hearing was scheduled for 28 February 2007 but it was adjourned. The trial started on 15 March 2007.

29. During the court proceedings the applicant's detention pending trial was further extended on 17 April, 29 June and 23 October 2007 (to 31 January 2008), 29 January (to 31 March 2008) and 18 March 2008 (to 21 June 2008). The courts repeated the grounds that had previously been given for his continued detention.

30. On 21 June 2008 the court decided that the applicant's detention should no longer be continued in this case since the maximum statutory time-limit of two years for pre-trial detention had expired. He was still detained on remand in the first and the third set of criminal proceedings against him (see paragraphs 8 and 21 above and paragraphs 32 and 37 below).

31. On 2 July 2009 the Lublin District Court gave judgment. The applicant was acquitted of all the offences with which he had been charged.

D. Third set of criminal proceedings (case no. IVK 220/08; IVK 394/08)

1. The course of the proceedings and the applicant's detention

32. On 10 October 2007 the Lublin District Court remanded the applicant in custody, relying on the suspicion that he had set up and organised a criminal group involved in drug-trafficking. It attached

importance to the likelihood of a severe sentence of imprisonment being imposed on the applicant, the serious nature of the offences of which he was suspected, the large quantities of drugs involved and the risk that he would attempt to obstruct the proceedings. That risk was based on the assumption that, having regard to the leading role played by him in the group, he might bring pressure to bear on witnesses or other suspects in general; no specific persons were named.

33. An appeal by the applicant against the detention order, likewise his further appeals against decisions extending his detention and all his subsequent applications for release and appeals against refusals to release him were unsuccessful. In his submissions, the applicant first of all stressed that the evidence gathered had not supported sufficiently the suspicion that he had committed the offences in question. He maintained that the grounds given for his detention were vague and general and did not indicate any concrete circumstances justifying the risk that he would obstruct the course of the proceedings. He also stated that the prosecutor's refusal to grant him access to the case file made it impossible for him to challenge the grounds for his continued detention.

In its decision of 25 October 2007, rejecting his appeal against the order of 10 October 2007 the Lublin Regional Court held, among other things, the following:

> "It must be firmly stressed that the material gathered in the case [in the form of other accused's testimonies and the results of searches carried out] makes it highly probable that [the applicant] had committed the offences with which he had been charged. ...
>
> The offence in question is liable to a maximum sentence of ten years' imprisonment which, having regard to the social danger of the offences, the fact that [the applicant] acted together with other persons in an organised criminal group and made crime his permanent source of income, as well as to the quantity of drugs distributed and [the applicant's] criminal record, supports the [lower court's] conclusion as to the severity of the anticipated penalty.
>
> The District Court was also right in relying on the justified fear that [the applicant] might unlawfully influence statements of other persons. The realisation of the purposes of the investigation requires [the authorities] to make such actions impossible, in particular influencing the content of testimonies or evidence given by the accused.
>
> It must be added that, as demonstrated by evidence so far obtained, [the applicant] set up and led an organised criminal group and had a decisive say in all matters concerning its functioning. ...
>
> In these circumstances, the imposition of detention is entirely justified because other preventive measures would not be sufficient to ensure the proper course of the investigation."

34. In the course of the investigation, the applicant's detention was extended on 8 January 2008 (to 9 April 2008) and 1 April 2008 (to 9 June 2008). In their decisions the authorities relied on the original grounds given for keeping him in custody, stressing, in particular, the severity of the penalty – up to eight years' imprisonment.

35. On 2 June 2008 a bill of indictment was lodged with the Lublin Regional Court. It comprised 36 charges brought against 17 accused. The applicant was indicted on charges of drug-trafficking committed as a leader of an organised criminal group.

36. During the court proceedings the courts further extended the applicant's detention pending trial on several occasions, namely on 5 June 2008 (to 9 October 2008), 7 October 2008 (to 9 January 2009), 30 December 2008 (to 9 April 2009), 7 April 2009 (to 7 June 2009), 27 May 2009 (to 27 August 2009), on 25 August 2009 (to 9 October 2009), on 7 October 2009 (to 9 December 2009) and on an unspecified subsequent date. The courts essentially repeated the grounds that had previously been given for his continued detention. In some decisions, they also relied on the highly complex nature of the case, stressing that the case file comprised 20 volumes, and the need to carry out time-consuming procedural actions (such, as for instance, the need to acquaint the accused with classified material – a process that lasted for some three weeks in August-September 2009).

37. On 2 July 2010 the court released the applicant on bail and under police supervision, i.e. on condition that he would report weekly to a police station. It also imposed on the applicant a ban on leaving the country.

38. On 16 June 2011 the Lublin Regional Court convicted the applicant of setting up and leading an organised criminal group and of participating in the distribution of large amounts of drugs. It sentenced him to a cumulative penalty of five years' imprisonment and a fine.

39. The proceedings are pending the parties' appeals.

2. Access to the investigation file no. VI Ds 54/07/S

40. On 2 November 2007, in connection with his appeals against the detention order (see paragraphs 32-33 above) the applicant requested the Lublin Regional Prosecutor (*Prokurator Okręgowy*) to grant him access to the investigation file and to allow him to obtain photocopies of some documents relating to the grounds given for his detention.

41. On 8 November 2007 the prosecutor refused that request, relying on the important interests of the proceedings (*ważny interes postępowania*). The prosecutor observed that the investigation was still in progress and, in these circumstances, the interests of the investigation outweighed the applicant's right to be acquainted with the evidence so far obtained by the prosecution. The applicant appealed.

42. On 10 December 2007 the Lublin Deputy Regional Prosecutor upheld the refusal of 8 November 2007. He observed, in particular, that the right to full disclosure of evidence gathered at the investigative stage of criminal proceedings was not absolute and could, in pursuit of a legitimate aim such as the protection of witnesses or secret sources of information or the interests of the investigation, be subject to limitations. It was also underlined that such limitations were even more stringent during the investigation as at that stage the principle of adversarial proceedings did not apply.

43. On 27 December 2007 the applicant again asked the investigating prosecutor to grant him access to the case file in order to enable him to make photocopies of certain parts of the file. He listed 86 relevant pages out of some 1,200 contained in the file. The applicant relied on Article 5 § 4 of the Convention and the principle of equality of arms, stressing that in anticipation of the prosecutor's request to the trial court for his detention to be further extended, he needed to inspect at least some parts of the evidence in order to challenge properly and effectively the lawfulness of his detention. In their requests, he added, the prosecution relied on evidence, premises and circumstances that were unknown to him, which made it impossible for him to respond to the arguments adduced by them in the procedure for the extension of his detention. Lastly, the applicant invoked his constitutional right to defend himself.

44. On 8 January 2008 the District Court extended the applicant's detention until 9 April 2008 (see also paragraph 34 above).

45. On 15 January 2008 the prosecutor, relying on Article 156 § 5 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), refused to grant the applicant access to the case file. The prosecutor observed that it was already the second such request lodged within a short period of time. The only difference was that this time the applicant relied on the Constitution and international law. That being so, the grounds given for the previous refusal were still valid. It was stressed that the prosecutor in his actions, in particular in assessing evidence, must be guided by the principle of objectivity and must respect the suspect's defence rights. However, the prosecutor should first of all ensure the efficient and unimpeded course of the investigation. Since several other persons had been charged together with the applicant, the interests of the investigation required the prosecution to keep secret the findings of fact so far made in order to secure an undisturbed process of obtaining evidence and to avoid any attempt to obstruct unlawfully the outcome of the investigation. As regards the constitutional and international-law arguments advanced by the applicant, the prosecutor considered that they had a marginal impact in the context of this decision since it had a legal basis in the Code of Criminal Procedure. The applicant appealed.

46. On 29 February 2008 the Lublin Deputy Regional Prosecutor upheld the refusal, repeating the previous grounds.

47. On 11 March 2008 the applicant made a subsequent request to the investigating prosecutor, asking for photocopies of certain documents contained in the case file. He listed a total of 97 relevant pages, out of some 1,500 currently contained in the file. He relied on the previous arguments, stressing that, given that his last detention order would expire on 9 April 2008, he needed to get acquainted with at least the selected documents – without being given access to the entire case file – so as to be able to challenge effectively the likely prolongation of his detention.

48. On 31 March 2008 the prosecutor rejected the request without giving any specific grounds for his refusal.

49. On 1 April 2008 the District Court extended the applicant's detention until 9 June 2008 (see paragraph 34 above).

50. The applicant submitted that as of May 2008, i.e. the time when he had been about to be indicted before the Lublin District Court (see paragraph 35 above), he still had no access to the file.

E. Censorship of the applicant's correspondence

51. The applicant submitted that during his detention his correspondence was continually censored by the authorities.

He produced seven envelopes of the censored letters.

52. Four envelopes bear a stamp that reads: "Censored, date ..., Prosecutor" (*Ocenzurowano, dnia ... Prokurator*), a hand written date and an illegible signature. Those envelopes contained:

1) one letter from the Main Police Headquarters (*Komenda Główna Policji*), censored on 2 August 2006;

2) two letters from the Central Administration of Prison Service (*Centralny Zarząd Służby Więziennej*), censored on 19 October and 8 December 2006 respectively;

3) one letter from the Warsaw Regional Inspectorate of Prison Service (*Okręgowy Inspektorat Służby Więziennej*), censored on 8 December 2006.

Three envelopes bear a stamp that reads: "Censored, the Lublin Regional Court, received date ..., sent date ..." (*Cenzurowano, Sąd Okręgowy Lublin, otrzymano dnia ..., wysłano dnia ...*), a stamped date and an illegible signature. The envelopes contained the following letters:

1) from the applicant's defence counsel; censored on 25 June 2007;

2) from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment, censored on 13 August 2007;

3) from the Office of the Committee for European Integration, censored on 16 August 2007.

53. The applicant did not lodge a civil action for compensation for the infringement of his personal rights on account of censorship of his

correspondence under Article 24 read in conjunction with Article 448 of the Civil Code.

F. Restrictions on the applicant's contact with his family

1. Contact with the son

(a) The applicant

54. Between 21 June 2006 (when he was arrested in the first set of proceedings) and 12 March 2007 (when he was indicted before the Lublin District Court), the applicant, despite numerous requests to that effect, was not allowed to receive visits from his son, M.P., born in 2004.

55. Between 28 April and 10 October 2007 the applicant was granted several open visits (*widzenie przy stoliku*) from the child, who was brought to the remand centre by a certain N.S., a third party.

56. On several occasions the applicant requested the Governor of the Lublin Remand Centre to have the standard 60-minute long visits from the son prolonged to 90 minutes. All his requests were dismissed as the authorities considered that the applicant's behaviour was not "more than exemplary as regards respecting the internal order in the remand centre and the prison rules" – a circumstance which justified granting visiting privileges.

57. Between 10 October 2007 (when the applicant was remanded in custody in the third set of proceedings) and 3 December 2007 he was again not allowed to see his son.

(b) The Government

58. The Government submitted that over the period from 21 June 2006 to 12 March 2007 the applicant had not asked for permission to receive visits from the son.

59. They stated that between 10 October and 3 December 2007 the applicant did not receive visits from the son.

60. The Government produced a detailed list of visits received by the applicant between 12 July 2006 and 19 January 2010. As from 3 December 2007 he received visits from his son on the following dates: 24 December 2007, 14 January, 11 February, 31 March, 21 April, 19 May, 23 June, 7 and 28 July, 11 and 25 August, 29 September, 13 and 20 October, 3 and 17 November and 22 December 2008. In 2009 the visits took place on 12 January, 2, 16 and 23 February, 9 and 30 March, 17 and 24 April, 11 and 18 May, 1 and 15 June, 6, 20 and 30 July, 3, 17 and 31 August, 13 and 28 September, 4 and 26 October, 8 and 22 November, 6, 20 and 27 December. Further visits took place on 10 and 17 January 2010.

The child was initially accompanied by N.S and, as from 29 September 2008 by A.W., the applicant's common-law wife and the mother of his son.

(c) Material in the Court's file

61. On 26 November 2007 W.W., the applicant's defence counsel, made a declaration that reads, in so far as relevant, as follows:

> "As [the applicant's] defence counsel from the date on which he had been detained on remand [in the first set of the criminal proceedings against him], i.e. 22 June 2006 to 4 April 2007 I made numerous requests on his behalf to the investigating prosecutor, asking him to issue permission for my client to have a visit form his 3-year old son M. ...
>
> Despite my repeated requests, I did not obtain such permission. The grounds given for these decisions referred to [such circumstances as] the child's interests and the possibility of obtaining additional evidence or new facts from my client. Throughout the entire investigation, the prosecutor issued only one permission in March 2007, which was about the time when [the applicant] was indicted before the court. I should add that this put a severe strain on my client and had a negative impact on his psychological state."

62. On 7 December 2007 the Lublin Regional Prosecutor informed the applicant that he had granted N.S. a closed visit (*widzenie przez telefon*) and that the latter was allowed to bring the applicant's son with him. The visit took place in a special room with a Perspex partition separating the applicant from his visitors. The applicant was informed that in the future he would be granted one such visit from the son monthly and that visits enabling them to have direct contact could not be allowed at that stage of the procedure.

2. Contact with the common-law wife

63. From 21 June 2006 to 29 September 2008 the applicant was not allowed to receive visits from A.W. Initially, the investigation authorities informed him that since A.W. was to be heard as a witness in the first set of criminal proceedings against him she could not obtain permission for visits. Later, on an unspecified date in 2006, in those proceedings A.W. was charged with money laundering committed together with the applicant. She was indicted on that charge before the Lublin District Court on 4 April 2007 (see paragraph 12 above). On this basis, the authorities refused to grant her permissions for visits for some further two years.

64. On 8 January 2007 the applicant was allowed to have a 60-minute long conversation on the prison phone with A.W.

On 29 September 2008 the applicant was granted the first open visit from A.W., who was allowed to bring their son with her. Since then the applicant has been granted on average 2 visits from her and the son monthly (see also paragraphs 60 above and 70 below).

3 Contact with the mother

(a) The applicant

65. The applicant maintained that from 21 June 2006 until 12 March 2007 he had not been allowed to receive visits from C.K., his mother, on the ground that she was to be heard as a witness in the first set of criminal proceedings against him.

(b) The Government

66**.** The Government submitted that the applicant's mother visited the applicant in prison on 6 December 2006 and 12 March 2007. On the first date, the applicant was granted an open visit. The second visit, in which M.K., his son, also participated was closed.

The applicant was also allowed to have a 60-minute long conversation on the prison phone with his mother on 11 October 2006 and 30 January 2007.

(c) Material in the Court's file

67. A copy of the applicant's request of 7 March 2007 for permission to have a visit from his mother and his son, addressed to the Lublin Regional Prosecutor's Office (*Prokuratura Okręgowa*), shows that on the original request the prosecutor made a handwritten note: "I grant permission for a supervised visit; 08.3.2007" and that the permission document was given to the person concerned on 9 March 2007.

4. List of visits received by the applicant during his detention from 12 July 2006 to 19 January 2010

68. The list of visits supplied by the Government shows that between 12 July 2006 and 19 January 2010 the applicant received 147 visits, of which 78 were meetings with his defence counsel (including one together with a police officer), 2 meetings with police officers, 2 meetings with prosecutors and 1 meeting with a notary.

The meetings with the defence counsel took place once a month on average.

The remaining 64 visits involved the applicant's family. They lasted from 30 to 60 minutes but on most occasions were 60-minute long.

69. At the initial stage of his detention the applicant was only allowed to have a 60-minute long conversation on the prison phone with his mother on 11 October 2006. He received the first family visit on 6 December 2006 – it was an open visit from his mother and lasted 60 minutes.

70. Later, he was allowed to have one 60-minute long phone conversation with his common-law wife, A.W., on 8 January 2007.

He was allowed to have a second phone conversation with his mother on 30 January 2007.

On 12 March 2007 the applicant received the first – supervised – visit from his son, M.P., who was brought to the remand centre by the applicant's mother.

On 29 September 2008 the applicant received the first visit from A.W., who was allowed to bring their son with her. It was an open visit that lasted 60 minutes.

71. As regards the visits which took place after the applicant was classified as a "dangerous detainee" (see paragraph 74 below), i.e. from 12 October 2007 onwards, the list of visits supplied by the Government shows that the applicant received 102 visits altogether, of which 53 were meetings with his lawyers, 1 with a police officer, 1 with a notary and 2 with prosecutors. The 45 remaining visits were from his family.

G. Imposition of the "dangerous detainee" regime

1. Undisputed facts

72. On 21 June 2006 the applicant was placed in the Radom Remand Centre (*Areszt Śledczy*). On 8 December 2006 he was transferred to the Lublin Remand Centre.

73. Between 23 February and 14 June 2007 the applicant was placed in a solitary cell for dangerous detainees (a so-called *"tymczasowo aresztowany niebezpieczny"*; in the relevant legal provisions referred to as „*tymczasowo aresztowany stwarzający poważne zagrożenie społeczne albo poważne zagrożenie dla bezpieczeństwa aresztu"*) without having been classified as such. The authorities of the Lublin Remand Centre justified their decision by security reasons. At that time, the applicant was not subjected to the stringent regime for dangerous detainees.

74. On 14 June 2007 the applicant was transferred to a cell for regular prisoners.

75. On 12 October 2007 the Lublin Remand Centre Penitentiary Commission (*Komisja Penitencjarna*) classified the applicant as a "dangerous detainee". It considered that it was necessary to place him in a cell for dangerous detainees as he had been charged with numerous offences, including unlawful detention and violent robbery, committed as a leader of an organised criminal group. The commission also referred to the applicant's serious lack of moral character (*wysoki stopień demoralizacji*). The applicant unsuccessfully appealed against this decision.

76. From 12 October 2007, when the applicant was placed in a cell for dangerous detainees, he remained under increased supervision. The cell, including its sanitary facilities, was constantly monitored *via* close-circuit television. He was subjected to a body search every time he left and entered the cell, which in practice meant that he had to strip naked in front of prison guards and was required to carry out deep knee-bends. The body search was

performed in a separate room, which was monitored and its recording was viewable in a duty room.

77. The applicant, whenever he was outside his cell, including his appearances at court hearings or medical visits, wore the so-called "joined shackles" (*kajdanki zespolone*) on his hands and feet. Those shackles consisted of hand-cuffs and fetters joined together with chains.

78. On 9 February 2008 he was taken to the Lublin Civil Hospital, where he underwent a number of medical examinations and tests in connection with severe pains in the abdominal cavity. He remained there for several hours, being handcuffed and fettered. He was all the time accompanied and watched by 3 policemen.

79. The applicant was allowed to spend one hour per day in an outdoor yard but was segregated from other detainees.

80. Between 20 December 2007 and 6 February 2008, at the applicant's request, another inmate, a certain L.G. was placed in his cell. Later, from 29 February to 14 April 2008 and from 6 August to 22 September 2008 he had one inmate assigned to his cell.

81. Every three months the Lublin Remand Centre Penitentiary Commission reviewed, and upheld, its decision classifying the applicant as a "dangerous detainee". The relevant decisions were limited to a short description of the nature of the suspicions or charges laid against him which, as such, justified the maintaining of the previous decisions.

For example, the decision of 31 July 2008 read, in so far as relevant, as follows:

> "Pursuant to Article 212a § 1 of the Code of Execution of Criminal Sentences, the Penitentiary Commission assigned [the applicant] to the category of detainees who should be placed in a remand centre in conditions ensuring increased protection of society and the security of the remand centre. The decision was based on the suspicion that he had a very high rank in organised crime structures and that he was a person displaying a serious lack of moral character. The detainee is suspected of committing offences of unlawful detention and robbery, which involved particular suffering for victims. On 10 October 2007 a fresh detention order was issued by the Lublin District Court, from which it transpired that he was suspected of setting up and leading an organised criminal group involved in the illegal distribution of large amounts of drugs. For this reason, the Commission upholds its decision to classify him in the category of detainees who should be placed in a remand centre in conditions ensuring increased protection of society and the security of the remand centre because the grounds for the further application of Article 212a § 1 of [the Code of Execution of Criminal Sentences] did not cease to exist."

82. The applicant appealed against all the decisions, arguing that the authorities violated the provisions of the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) relating to that matter. He also complained about being regularly subjected to a body search, constant monitoring of his cell and the generally inadequate equipment of the solitary cell. For instance, in his appeal against the Penitentiary Commission's

decision of 2 July 2009, upholding his classification as a "dangerous detainee", he submitted, among other things, the following:

> " ... Since 12 October 2007 I have been classified as a 'dangerous detainee' .... This decision is arbitrary and was given without any evaluation of the circumstances that had given rise to classify me as such. I am suspected of drug trafficking in an organised criminal group ... and for this reason I was assigned the "dangerous" category. Article 212a § 1 of the Code of Execution of Criminal Sentences obliges the prison administration to evaluate the circumstances that justify the maintaining of this classification.
>
> Regrettably, the assessment of [the need to maintain it] is illusory or non-existent and the subsequent extensions of the classification as 'dangerous' are, so to speak, automatic.
>
> The very fact that I was charged with acting in an organised criminal group is not sufficient to consider me a dangerous person, and certainly not sufficient to maintain this classification for 2 years, having regard to the extent of the interference with [my] civil rights and liberties ... .
>
> Relying on this classification, the Lublin Remand Centre subjects me to repression and interferences:
>
> - stripping me naked (including underwear) and inspection of the anus – at least twice a day;
>
> - isolating me from all persons (I am in a solitary cell) for more than 500 days;
>
> - watching me during my physiological acts in the toilet;
>
> - making it impossible for me to participate in any kind of sports activity in the prison sports field (I do not leave the cell at all);
>
> - walking me in joined shackles all the time.
>
> Given the degree of the interference in my life, which amounts to daily ill-treatment and which is not based on a court conviction, one should ask to what extent a mere charge of participating in a criminal group suffices to treat me in this way, especially over the lengthy period of 2 years.
>
> For that reason, the acts of the prison administration are in breach of the law, in particular Article 3 of [the Convention]. ... This conclusion is reinforced by the fact that for my part there has never been any danger to the functioning of the remand centre – this is confirmed by the fact that there has been no single instance of the use of force against me. ...[T]he prison administration subjects me to these practices without good reason, and the status of 'dangerous' serves, so to speak, as a measure of prevention, whereas this status should be restricted to the necessary minimum – otherwise it becomes an arbitrary interference with the most intimate spheres of human life. ..."

83. All the applicant's subsequent, similar appeals were dismissed. The authorities relied on the grounds given for the initial decision.

By way of example, the Regional Court's decision of 19 August 2009, upholding the Penitentiary Commission's decision of 2 July 2009 (the object of the appeal cited in paragraph 82 above) read, in so far as relevant, as follows:

> "The detainee's appeal is groundless and will not be allowed. ...
>
> Pursuant to Article 212a § 3 of the Code of Execution of Criminal Sentences, a detainee who is suspected of committing an offence in an organised criminal group or organisation aimed at committing offences shall be placed in a remand centre in conditions ensuring increased protection of society and the security of the remand centre.
>
> According to paragraph 1 of that provision, the review of a decision on classification of a detainee in conditions ensuring increased protection of society and prison security shall take place at least once every three months.
>
> [The applicant] still poses a serious danger to society and prison security. In addition, he is remanded by the Lublin Regional Court as a person suspected of setting up and leading an organised criminal group involved in illegal distribution of large amounts of drugs.
>
> Accordingly, it transpires from the material gathered in the present case that the conditions of the above-cited provision have been fulfilled and, by the same token, the contested decision is lawful."

84. In 2007-2009 the applicant made many requests to the prison authorities, asking for permission to have in his cell his own sports equipment (i.e. dumb-bells), own TV set, "Playstation" console, computer games, CD-player and CDs with foreign language courses and music but all those requests were refused. He also asked the authorities to enable him to take part in training, workshops, courses or any sports activities organised for other inmates or to allow him to perform any unpaid work, submitting that his complete isolation from other people was putting an exceptionally severe strain on him. The authorities replied that there would be advertisements informing prisoners of the possibility of enrolling on courses or trainings or of unpaid work opportunities. They added, however, that the need to socialise with others was not a ground for being qualified for participation in such activities in prison.

85. As of 20 April 2010 the applicant was still not allowed to perform any paid or unpaid work, take part in any training course, workshop or sports activity.

86. Until his release on 2 July 2010 he was continually classified as a "dangerous detainee".

2. Facts in dispute

87. The Government submitted that between 23 February and 14 June 2007 the applicant was placed in a solitary cell in accordance with the

Ordinance of the Minister of Justice of 31 October 2003 on means of protection of organisational units of the Prison Service (*Rozporządzenie Ministra Sprawiedliwości z dn. 31 października 2003 r. w sprawie sposobów ochrony jednostek organizacyjnych Służby Więziennej*) ("the 2003 Ordinance"). They did not indicate any specific provision of that ordinance. They added that during his placement in the solitary cell the applicant could watch television.

They further stated that in the Lublin Remand Centre the cells in which the applicant was held were equipped with a television set and a radio enabling him to listen to various radio stations. Every Sunday Mass was broadcast.

88. The applicant stated that he had never had radio in his cell.

H. Conditions of the applicant's detention

1. The applicant

89. The applicant submitted that the living conditions in the Lublin Remand Centre and the Radom Remand Centre were inadequate. The cells were unventilated; the windows were covered by a plastic blind, which made the cell very hot during the summer. The applicant could not wear his own clothes but only a red uniform designated for dangerous detainees, which was not warm enough during the winter time. The furniture was permanently fixed to the floor.

The applicant made numerous complaints to the prison authorities and the Ombudsman but they were to no avail.

2. The Government

(a) Radom Remand Centre

90. The applicant was detained in the Radom Remand Centre from 21 June to 8 December 2006. Until 22 November 2006 he was in a cell designated for 3 persons. Each inmate had at his disposal a cell surface of 3 m^2. From 22 November to 8 December 2006 (i.e. for 18 days) the space available was 2.73 m^2 per person.

The cells in which the applicant was placed were equipped with a sanitary corner with a sliding door.

91. The conditions of detention in the Radom Remand Centre were good. All detainees were provided with the appropriate clothing, linen and detergents. Personal hygiene products were distributed once a month. The bed linen was washed at least twice a month and underwear once a week. Other clothes and footwear were changed depending on a given detainee's needs.

92. The detainees received meals in their cells. The meals were always served at the proper temperature and contained all the required nutritional values.

(b) Lublin Remand Centre

93. From 8 December 2006 onwards the applicant was detained in the Lublin Remand Centre. From 6 August 2008 to the beginning of 2010 he was placed in the following cells: X-114 (surface 9.23 m^2), X-129 surface 9.23 m^2), X-128 (surface 8.13 m^2), X-125 (surface 9.62 m^2), X- 127 (surface 7.97 m^2) and X-117 (surface 7.96 m^2). From 29 February to 14 April 2008 and from 6 August to 22 September 2008 he had one inmate assigned to his cell.

94. All the cells in which the applicant was placed were equipped with a sanitary corner, to which the applicant had permanent access.

95. The detainees were provided with appropriate clothing, linen and detergents. Personal hygiene products were given to the applicant once a month. The bed linen was washed at least twice a month and underwear once a week. Other clothes and footwear were changed according to a given detainee's needs.

96. On 12 October 2007, at the applicant's request, the authorities provided him with an extra pullover.

97. The detainees received meals in their cells. The meals were always served at the proper temperature and contained all the required nutritional values. The quality of meals was verified by a doctor and approved by the governor. All the cells were equipped with ventilation and heating. Detainees, including those classified as dangerous, could open the windows in their cells.

98. Throughout his detention the applicant received adequate medical treatment from prison doctors. He also consulted specialists in psychiatry, dermatology and surgery.

3. Undisputed facts

99. In August 2007 the applicant sued the State Treasury – *station fisci* the Radom Remand Centre and the Lublin Remand Centre before the Lublin Regional Court, seeking damages for the degrading conditions of his detention. On an unspecified date the particulars of claim were returned to the applicant for non-compliance with formal requirements.

100. On 15 February 2008 the applicant lodged a fresh claim for damages arising from the physical conditions of his detention (in particular, overcrowding, lack of proper light and ventilation and inadequate clothing provided by the authorities) against the same defendants. It was registered in the Lublin Regional Court under no. IC 90/08. According to the material in the Court's possession, the proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

101. The relevant domestic law and practice concerning the imposition of detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing others "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Gołek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006) and *Celejewski v. Poland* (no. 17584/04, §§ 22-23, 4 May 2006).

B. Access to the investigation file

102. Until 28 August 2009 no provision of the Code of Criminal Procedure specifically addressed the issue of a detainee's access to an investigation file in connection with his challenge to the imposition or to the lawfulness of his detention on remand. A general provision governing access to the case file was laid down in Article 156 § 5 of the Code of Criminal Procedure, which is still worded as at the relevant time and which reads:

> "Unless otherwise provided for by law, in the course of an investigation the parties, defence counsel, legal and lay representatives shall be given access to the case file and shall be able to make copies and photocopies or to obtain against payment certified copies and photocopies only with the permission of the person conducting the investigation. With the permission of a prosecutor and in exceptional circumstances in the course of an investigation access to the case file may be given to other persons."

103. On the above-mentioned date Article 156 was amended and a new paragraph 5(a) was inserted. The new paragraph reads:

> " In the course of an investigation a suspect and his defence counsel shall be given access to the case-file in part including evidence indicated in a [prosecutor's] application for the imposition or extension of detention on remand and [evidence] listed in a [court] decision imposing or extending detention on remand. The prosecutor may refuse to give access to this part of the case-file only if there is a justified fear that this would jeopardise the life or health of the victim or another party to the proceedings, would entail the risk of evidence being destroyed, concealed or forged or would hinder the identification and apprehension of an accomplice to the offence with which the suspect has been charged or of perpetrators of other offences disclosed in the course of the proceedings, would reveal actions undertaken at the pre-investigative stage or would entail the risk of obstructing the investigation by any other unlawful means."

C. Monitoring of detainees' correspondence

104. The relevant domestic law and practice concerning the censorship of prisoners' correspondence are set out in the Court's judgment in the case of *Kliza v. Poland,* no. 8363/04, §§ 29-34, 6 September 2007.

D. "Dangerous detainee" regime

1. General rules

105. Article 212a of the Code of Execution of Criminal Sentences reads, in so far as relevant, as follows:

> "1. The penitentiary commission shall classify a detainee as posing a serious danger to society or to the security of a remand centre. It shall review its decisions on that matter at least once every three months. The authority at whose disposal a detainee remains and a penitentiary judge shall be informed of decisions taken.
>
> 2. A detainee, referred to in subparagraph 1, shall be placed in a designated remand centre's ward or in a cell in conditions ensuring increased protection of society and the security of the remand centre. A penitentiary judge shall be informed about this placement.
>
> 3. A detainee who is suspected of committing an offence in an organised criminal group or organisation aimed at committing offences shall be placed in a remand centre in conditions ensuring increased protection of society and the security of the remand centre, unless particular circumstances militate against such placement.
>
> ..."

The penitentiary commission referred to in the above provision is set up by the governor of the prison or the governor of the remand centre. It is composed of prison officers and prison employees. Other persons – such as representatives of associations, foundations and institutions involved in rehabilitation of prisoners as well as church or religious organisations – may participate in the work of the commission in an advisory capacity. If the commission's decision on the classification of a prisoner or detainee is contrary to the law, the relevant penitentiary court may quash or alter that decision (Article 76). A detainee may appeal against the penitentiary commission's decision but solely on the ground of its non-conformity with the law (Article 7).

2. Functioning of wards for dangerous detainees in practice

106. Article 212b of the Code of Execution of Criminal Sentences lays down specific arrangements for detention of a "dangerous detainee". It reads, in so far as relevant, as follows:

"1. In a remand centre a detainee referred to in Article 212a shall be held in the following conditions:

1) cells and places designated for work, study, walks, visits, religious services, religious meetings and religious classes, as well as cultural and educational activities, physical exercise and sports, shall be equipped with adequate technical and protective security systems;

2) cells shall be controlled more often than those in which detainees [not classified as "dangerous"] are held;

3) a detainee may study, work, participate directly in religious services, religious meetings and classes, and participate in cultural and educational activities, exercise and do sports only in the ward in which he is held;

4) a detainee's movement around a remand centre shall be under increased supervision and shall be restricted to what is strictly necessary;

5) a detainee shall be subjected to a personal check (*kontrola osobista*) each time he leaves and enters his cell;

6) a detainee's walk shall take place in designated areas and under increased supervision;

...

8) visits shall take place in designated areas and under increased supervision ...;

9) a detainee may not use his own clothes or footwear.

Rules on the use of handcuffs, fetters and other restraint measures are laid down in the Cabinet's Ordinance of 17 September 1990 on conditions and manner of using direct restraint measures by policemen (as amended on 19 July 2005) (*Rozporządzenie Rady Ministrów z dnia 17 września 1990 r. w sprawie określenia przypadków oraz warunków i sposobów użycia przez policjantów środków przymusu bezpośredniego*) ("the 1990 Ordinance"). Paragraph 6 of the 1990 Ordinance reads, in so far as relevant, as follows:

"1b Handcuffs shall be put on hands kept on the front. If a person is aggressive or dangerous, handcuffs may be put on hands kept behind the back.

2b In respect of persons detained or sentenced to imprisonment, in particularly justified cases joined shackles designed to be worn on hands and legs may be used."

107. The wards "N" (from "*niebezpieczny*" – dangerous in Polish) designed for dangerous detainees are closed units within prisons or remand centres, shut off to other sections of the detention facility. They are placed in a separate building or in a specific part of the prison building fully isolated from other sections of the prison, usually through a special entry or corridor. A security door remains closed at all times and the entire ward is continually monitored *via* close-circuit television. Regular daily routines

(provision of meals, clothes, etc.) are organised with the use of remote-controlled devices, reducing to the minimum any direct contact between the detainees and the prison guards. The prison guards wear bullet-proof jackets.

Routine searches of cells are often carried out.

108. The detainees, whenever outside cells, even within the ward "N", wear "joined shackles" or are handcuffed at all times. They are subjected to a personal check before leaving cells and on return. They all wear special red uniforms. They have a daily, solitary walk in a specially designated and segregated area and if they are allowed to spend some time in a day room, they usually remain alone. They are not necessarily subjected to solitary confinement and may share the cell with an inmate or inmates but, pursuant to paragraph 90 of the 2003 Ordinance, the number of detainees in the cell is limited to 3 persons at the same time.

According to paragraph 91(1) of the 2003 Ordinance, a dangerous detainee can move within the detention facility only singly. In justified cases such detainees may move in a group of three but under the increased supervision by the prison guards.

Paragraph 91(4) states that, outside the cell and facilities designated for "N" detainees, an "N" inmate must be permanently and directly supervised by at least 2 prison guards. This restriction can only exceptionally and in justified cases be lifted by the Prison Governor.

A dangerous detainee cannot perform any work using dangerous tools, handle devices designed to make dangerous or illegal objects, take up any work enabling him to set fire, cause an explosion or any danger to the prison security or work in any place enabling an escape or uncontrolled contact with other persons (paragraph 92). He is not allowed to make purchases in the prison shop but must submit his shopping list to a designated prison guard. The goods are delivered directly to his cell (paragraph 93).

109. As of 2008 there were 16 "N" wards in Polish prisons, which had the capacity to hold from 17 to 45 detainees.

As of February 2010 there were 340 "dangerous detainees" (convicted or detained on remand) in "N" wards.

3. Personal check

110. Article 116 § 2 of the Code of Execution of Criminal Sentences defines the "personal check" in the following way:

> "A personal check means an inspection of the body and checking of clothes, underwear and footwear as well as [other] objects in a [prisoner's] possession. The inspection of the body, checking of clothes and footwear shall be carried out in a room, in the absence of third parties and persons of the opposite sex and shall be effected by persons of the same sex."

111. Pursuant to paragraph 94 § 1 of the 2003 Ordinance:

> "1. A [dangerous] detainee shall be subjected to a personal or cursory check, in particular:
>
> 1) before leaving the ward or the workplace and after his return there;
>
> 2) before individual conversations or meetings with the representatives of the prison administration or other persons that take place in the ward;
>
> 3) immediately after the use of a direct coercive measure – if it is possible given the nature of the measure;
>
> 4) directly before the beginning of the escort."

4. Monitoring of dangerous detainees

112. By virtue of the law of 18 June 2009 on amendments to the Code of Execution of Criminal Sentences (*ustawa o zmianie ustawy – Kodeks karny wykonawczy*) ("the 2009 Amendment") Article 212b was rephrased and new rules on monitoring detention facilities by means of close-circuit television were added. The 2009 Amendment entered into force on 22 October 2009.

113. The former text of Article 212b (see paragraph 106 above) became paragraph 1 of this provision and a new paragraph 2 was introduced. This new provision is formulated as follows:

> "2. The behaviour of a person in pre-trial detention referred to in Article 212a § 1 and 4 in a prison cell, including its part designated for sanitary and hygienic purposes and in places referred to in paragraph 1 (1) [of this provision] shall be monitored permanently. The images and sound [obtained through monitoring] shall be recorded."

114. The above provision belongs to the set of new rules that introduced monitoring in prisons by means of close-circuit television as a necessary security measure.

The new Article 73a reads, in so far as relevant, as follows:

> "1. Detention facilities may be monitored through an internal system of devices registering images or sound, including close-circuit television.
>
> 2. Monitoring, ensuring the observation of a prisoner's behaviour, may be used in particular in prison cells including parts designated for sanitary and hygienic purposes, in baths, in premises designated for visits, in places of employment of detainees, in traffic routes, in prison yards, as well as to ensure observation of the prison grounds outside buildings, including the lines of external walls.
>
> 3. Monitored images or sound may be registered with the help of appropriate devices.
>
> 4. Monitoring and registering of sound may not include information subject to the seal of confession or secret protected by law.

> 5. Images from close-circuit television installed in the part of the prison cell designated for sanitary and hygienic purposes and in baths shall be transmitted to monitors or other devices referred to in paragraph 3 in a manner making it impossible to show [detainees'] private parts or their intimate physiological functions.
>
> ..."

115. Pursuant to Article 73 (a) §§ 6 and 7, if the registered material is not relevant for the prison security or security of an individual prisoner it shall be immediately destroyed. The Prison Governor decides for how long the relevant registered material should be stored and how it is to be used.

116. However, all registered material concerning a dangerous detainee is stored in accordance with Article 88c, which reads as follows:

> "The behaviour of a [detainee classified as dangerous] in a prison cell, including its part designated for sanitary and hygienic purposes and in places referred to in Article 88b (1) [places and premises designated for work, education, walking exercise, receiving visits, religious service, religious meetings and teaching, as well as cultural, educational and sports activity] shall be monitored permanently. The images and sound [obtained through monitoring] shall be recorded."

117. Before that amendment, the rules on monitoring detainees were as included in paragraph 81 § 2 of the 2003 Ordinance, according to which a prison cell could be additionally equipped with video cameras and devices enabling listening.

E. Right to visits in detention

1. Situation until 8 June 2010

118. Pursuant to Article 217 § 1 of the Code of Execution of Criminal Sentences, as applicable until 8 June 2010, a detainee was allowed to receive visitors, provided that he had obtained a visit permission (*"zezwolenie na widzenie"*) from the authority at whose disposal he remained, i.e. an investigating prosecutor (at the investigative stage) or from the trial court (once the trial had begun) or from the appellate court (in appeal proceedings). A detainee was entitled to 1 one-hour long visit per month.

According to paragraphs 2 and 3, a visit should take place in the presence of a prison guard in a manner making it impossible for a detainee to have direct contact with a visitor but the authority which issued the permission may set other conditions. In practice, there are 3 types of visits: an "open visit", a "supervised visit" (*widzenie w obecności funkcjonariusza Służby Więziennej*) and a "closed visit".

An open visit takes place in a common room designated for visits. Each detainee and his visitors have at their disposal a table at which they may sit together and can have an unrestricted conversation and direct physical

contact. Several detainees receive visits at the same time and in the same room.

A supervised visit takes place in the same common room but the prison guard is present at the table, controls the course of the visit, may restrict physical contact if so ordered under the visit permission, although his principal role usually is to ensure that the visit is not used for the purposes of obstructing the proceedings or achieving any unlawful aims and to prevent the transferring of any forbidden objects from or to prison.

A closed visit takes place in a special room. A detainee is separated from his visitor by a Perspex partition and they communicate through an internal phone.

119. Article 217 § 5 lays down specific conditions for receiving visits by dangerous detainees in the following way:

> "In the case of a [dangerous detainee], the governor of the remand centre shall inform the authority at whose disposal a detainee remains of the existence of a serious danger for a visitor and that it is necessary to grant a visit permission in a manner making [his or her] direct contact with a detainee impossible."

2. Situation as from 8 June 2010

(a) Constitutional Court's judgment of 2 July 2009 (no. K. 1/07)

120. The judgment was given following an application, lodged by the Ombudsman on 2 January 2007, alleging that Article 217 § 1 of the Code of Execution of Criminal Sentences was incompatible with a number of constitutional provisions, including the principle of protection of private and family life (Article 47 of the Constitution), the principle of proportionality (Article 31 § 3 of the Constitution), Article 8 of the Convention and Article 37 of the United Nations Convention on the Rights of the Child. The Constitutional Court's judgment became effective on 8 July 2009, the date of its publication in the Journal of Laws (*Dziennik Ustaw*).

121. The Constitutional Court ruled that Article 217 § 1, in so far as it did not specify the reasons for refusing family visits to those in pre-trial detention, was incompatible with the above provisions. The court held that this provision did not indicate with sufficient clarity the limitations on a detainee's constitutional right to protection of private and family life. The court also considered that Article 217 § 1 was incompatible with the Constitution in so far as it did not provide for a possibility to appeal against a prosecutor's decision to refuse a family visit to those in pre-trial detention.

(b) Amendments to the Code of Execution of Criminal Sentences

122. On 5 November 2009 Parliament adopted amendments to Article 217 of the Code of Execution of Criminal Sentences. In particular,

subparagraphs 1a-1f were added. These provisions stipulate that a detainee is entitled to at least one family visit per month. In addition, they indicate specific conditions for refusing a family visit to a detainee and provide an appeal procedure against such a refusal. The amendments entered into force on 8 June 2010.

F. Claim for damages for the infringement of personal rights

1. Liability for infringement of personal rights under the Civil Code

123. Article 23 of the Civil Code contains a non-exhaustive list of so-called "personal rights" (*dobra osobiste*). This provision states:

> "The personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements, shall be protected by the civil law regardless of the protection laid down in other legal provisions."

Article 24, paragraph 1, of the Civil Code provides:

> "A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest."

124. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. That provision, in its relevant part, reads:

> "The court may grant an adequate sum as pecuniary compensation for non-material damage (*krzywda*) suffered to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of seeking any other relief that may be necessary for removing the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ..."

125. Articles 417 et seq. of the Polish Civil Code provide for the State's liability in tort.

Article 417 § 1 of the Civil Code (as amended) provides:

> "The State Treasury, or [as the case may be] a self-government entity or other legal person responsible for exercising public authority, shall be liable for any damage (*szkoda*) caused by an unlawful act or omission [committed] in connection with the exercise of public authority."

2. Limitation periods for civil claims based on tort

126. Article 442^1 of the Civil Code sets out limitation periods for civil claims based on tort, including claims under Article 23 read in conjunction with Articles 24 and 448 of the Civil Code. This provision, in the version applicable as from 10 August 2007, reads, in so far as relevant, as follows:

> "1. A claim for compensation for damage caused by a tort shall lapse after the expiration of three years from the date on which the claimant learned of the damage and of a person liable for it. However, this time-limit may not be longer than ten years following the date on which the event causing the damage occurred."

III. INTERNATIONAL DOCUMENTS

A. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

127. The recommendation, in its part relating to the application of security measures reads, in so far as relevant, as follows:

"Security

"51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

a. the risk that they would present to the community if they were to escape;

b. the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment."

Safety

"52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

52.3 Every possible effort shall be made to allow all prisoners to take a full part in daily activities in safety.

52.4 It shall be possible for prisoners to contact staff at all times, including during the night.

52.5 National health and safety laws shall be observed in prisons."

Special high security or safety measures

"53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners."

B. The 2009 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

128. From 26 November to 8 December 2009 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") carried out a periodic visit to selected detention establishments in Poland.

The CPT visited wards designated for dangerous detainees in the Poznań Remand Centre, the Racibórz Prison and the Rawicz Prison. The CPT report contains a general description of the "N" regime and a number of specific recommendations aimed at ameliorating conditions of detention of inmates with "N" category status in the establishments visited. It also lists recommendations aimed at removing perceived shortcomings of the "dangerous detainee" regime in general.

129. The following observations were made in paragraph 91 of the report in respect of the application of the regime:

> "The regime applied to 'N' category prisoners remained very restrictive, similar to the one described in the report on the 2004 visit. Out-of-cell time consisted essentially of one hour of outdoor exercise per day (taken either alone or in the company of a cellmate) and access to a recreation room twice weekly at Poznań Remand Prison and Racibórz Prison. Inmates could have their own TV in the cell. They were entitled to a weekly shower, two visits a month, and two phone calls per month for sentenced prisoners (at the prosecutor's discretion for remand prisoners) at Rawicz and Racibórz prisons, and a five-minute-daily phone call for sentenced prisoners at Poznań Remand Prison. Contact with staff was limited to occasional visits by educators, psychologists and a chaplain.
>
> The CPT remains of the opinion that the regime for 'N' status prisoners should be fundamentally reviewed. Solitary confinement or small-group isolation for extended periods is more likely to de-socialise than re-socialise people. There should instead be a structured programme of constructive and preferably out-of-cell activities, and educators and psychologists should be proactive in working with "N" status prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day. As stressed in the report on the visit in 2004, regardless of the gravity of the offences of which prisoners are accused or have been convicted and/or their presumed dangerousness, efforts must be made to provide them with appropriate stimulation and, in particular, with adequate human contact."

130. In paragraph 92 of the report the CPT referred to the procedure for the classification as a "dangerous detainee" and the usually lengthy application of the "dangerous detainee" status in the following terms:

> "The procedure for allocation and review of 'N' status remained unchanged. Despite the presence of regular quarterly reviews, most prisoners remained in 'N' status for lengthy periods of time. ...
>
> The Committee must stress that placement in an 'N' unit should not be a purely passive response to the prisoner's attitude and behaviour. Instead, reviews of placement should be objective and meaningful, and form part of a positive process designed to address the prisoner's problems and permit his (re-)integration into the mainstream prison population. In the CPT's opinion, the procedure for allocating a prisoner to 'N' status should be refined to ensure that only those who pose an ongoing high risk if accommodated in the mainstream of the prison population are accorded this status. Reviews of 'N' status should specify clearly what is to be done to assist the prisoner concerned to move away from the 'N' status and provide clear criteria for assessing development. Prisoners should be fully involved in all review processes. The Committee reiterates its recommendation that the Polish authorities review current practice with a view to ensuring that "N" status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category."

131. In paragraph 94, the CPT expressed the following opinion regarding the practice of routine strip-searches:

> "The CPT also has serious misgivings about the systematic practice of obliging 'N' status prisoners to undergo routine strip-searches whenever entering or leaving their cells. The prisoners concerned had to undress completely, and squat fully naked in

view of the guards and any prisoner(s) sharing the cell while all their clothes were examined.

In the CPT's opinion, such a practice could be considered as amounting to degrading treatment. The Committee recommends that strip-searches only be conducted on the basis of a concrete suspicion and in an appropriate setting and be carried out in a manner respectful of human dignity."

132. The CPT gave the following general recommendations to the Polish Government in respect to prisoners classified as "dangerous" ("N" status):

"- the Polish authorities to review the regime applied to 'N' status prisoners and to develop individual plans aimed at providing appropriate mental and physical stimulation to prisoners (paragraph 91);

- the Polish authorities to review current practice with a view to ensuring that 'N' status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category (paragraph 92);

- strip-searches to be conducted only on the basis of a concrete suspicion and in an appropriate setting, and to be carried out in a manner respectful of human dignity (paragraph 94).

C. The Polish Government's response to the CPT's report

133. The Polish Government's response to the CPT report was published on 12 July 2011.

134. In respect of the recommendation that the Polish authorities should revise the regime applied against "N" status prisoners and develop individual plans aimed at providing inmates with appropriate psychological and physical stimulation (paragraph 91), they stated:

"Adult[s] ... classified in the category of so-called dangerous offenders have a possibility of selecting a system in which they serve their sentence of imprisonment, i.e. programmed impact or an ordinary system. The above does not apply to sentenced juvenile offenders who are classified as dangerous and who obligatorily serve their sentence in the system of programmed impact. In an ordinary system, a convict may use employment available at the penitentiary institution, as well as education and cultural-educational and sports classes. As far as such convicts are concerned, no plans are made for application of the individual programme of impact. The individual programme of impact is prepared in co-operation with the convict who declared that he wishes to serve his sentence in the system of programmed impact, which anticipates active participation of the convict in the process of re-socialization by means of fulfilment of tasks imposed upon him as part of the programme which are aimed at solving the problems constituting the grounds for the offences he committed.

Dangerous convicts qualified in a therapeutic system requiring specialized impact re presented with individual therapeutic programmes preceded by diagnosis, which encompasses:

1) a description of the causes of the event;

2) a description of irregularities in the area of cognitive, emotional and behavioural processes;

3) characteristics of the actual state of their psychological and physical condition;

4) a description of the problem constituting the grounds justifying delegation for the therapeutic system;

5) description of individual problems of the convict;

6) evaluation of motivation to participate in implementation of the individual therapeutic programme;

7) indication of positive features if personality and behaviour of the convict.

When developing an individual therapeutic programme, the following should be specified:

1) the scope of the conducted activities;

2) purpose of impact, possible to be undertaken in the conditions of a therapeutic ward or outside such ward, taking into account the properties of the convict;

3) methods of specialized impact;

4) criteria for implementation of an individual therapeutic programme.

Convicts qualified in the category of so-called dangerous are subjected to penitentiary impact with limitations deriving from the fact of causing by them of serious social threat or a serious threat to security of the institution. Moreover, they are subjected to impact whose purpose is to, in particular, decrease emotional tensions, as well as limitation of tendencies for aggressive or self-aggressive behaviours. In the individual programme of impact and the individual therapeutic programme conducted for him, methods and measures are specified which are aimed at mental and physical stimulation of the convict. It should also be emphasised that each inmate, including dangerous offender, exhibiting symptoms of worsening of his mental conditions is covered by psychological and psychiatric help. Moreover, dangerous inmates are also covered by intensive psychological supervision for the purpose of elimination of tensions resulting from an increased isolation.

The Polish prison system developed rules of organization and conditions of conduct of penitentiary impact against convicts, persons under detention on remand and punished persons who pose serious social danger or serious danger for security of the penitentiary institution or a detention on remand centre, kept in conditions ensuring increased security of the community and the security of the penitentiary institution. Such solutions are aimed at intensification and unification of impact against dangerous inmates, and in particular:

- directing the penitentiary work on preventing of negative consequences of limitation of social contacts by organization and initiation of desirable activity as part of cultural-educational and sports activities, re-adaptation programmes;

- undertaking measures connected with maintenance of mental hygiene, including the reduction of the level of stress and aggression;

- a need of allowing the inmate to commence or continue education (in particular in case of juvenile offenders);

- undertaking of employment in the division;

- impact based on educational and prophylactic programmes.

Recommendations of the Committee concerning development of individual programmes for dangerous convicts have been taken into account and are implemented according to the provisions binding in this regard."

135. Referring to the recommendation that the Polish authorities should verify their current practice in order to ensure that the "N" status is accorded appropriately and maintained only in respect to prisoners who do, in fact, require being qualified in such category (paragraph 92), the Government responded:

"In the Polish penal law, the basic legal act specifying criteria of qualifying inmates creating serious social danger or serious danger to security of the institution is the [Code of Execution of Criminal Sentences].

The aforementioned inmates are placed in a designated division or cell of a penitentiary institution or an investigation detention centre in conditions ensuring increased protection of the community and the security of the penitentiary unit. An authority authorized to verify a necessity of further stay of the inmate in a designated division or cell is a penitentiary commission. The penitentiary commission is obliged to verify its decisions in this regard at least once every three months. Decisions taken by the penitentiary commission shall be each time notified to the penitentiary judge, and in the event of detention on remand, also to the authority at whose disposal the inmate is. The penitentiary commission performed an inquisitive and, in every case, individual analysis of justification of the request for qualification, as well as verifies a necessity of continued stay of the inmates in delegated division or cell.

Moreover, attention should be drawn to the fact that each decision of the authority executing the judgement according to Art. 7 of the [Code of Execution of Criminal Sentences] is subject to an appeal by the inmate.

Summing up the above, we can state that such frequent verification of this category of inmates, an analysis of behaviours and a legal situation gives a guarantee of real evaluation of the situation of the inmate and possible benefits deriving from continued application against him of an extended system of protection."

136. Lastly, in regard to the recommendation that a strip-search should be conducted only on the basis of a concrete suspicion and under appropriate conditions, as well as with respect for human dignity (paragraph 94 of the Report), the Government stated:

"The principles and procedures of performing a personal search of the inmate and other persons in penitentiary institutions and investigation detention centres are regulated in the [Code of Execution of Criminal Sentences] and the [Ordinance of the

Minister of Justice of 31 October 2003 on means of protection of organisational units of the Prison Service]. According to these provisions, personal check-up consists of examination of the body and checking clothes, underwear and shoes, including any objects in possession of the convict. Inspection of the body and checking-up clothes and shoes is each time performed by officers of the Prison Service in a separate room, in absence of any third parties and persons of a different sex, and is performed by persons of the same sex. The conducted control must, on many occasions have a prevention character, but it is always performed with respect for human dignity, applying the principle of humanitarianism and legality. The control is conducted for the purpose of finding dangerous and forbidden products and preventing an escape or in other justified cases. Departure from these rules would entail a realistic threat to security of the penitentiary unit and inmates kept therein."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE IMPOSITION OF THE "DANGEROUS DETAINEE" REGIME

137. The applicant complained under Article 3 of the Convention that the continued imposition of the "dangerous detainee" regime on him amounted to inhuman and degrading treatment and was in breach of this provision. He referred, in particular, to such aspects of the regime as his mostly solitary confinement and prolonged and excessive isolation from his family, the outside world and other detainees and such restrictions as wearing "joined shackles" on his hands and feet all the time whenever he was outside his cell, the routine humiliating strip-searches to which he was subjected daily and the constant monitoring of his cell – including sanitary facilities – *via* close-circuit television.

Article 3 of the Convention states:

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

138. The Government contested that argument.

A. Admissibility

139. The Court notes that this complaint 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' arguments

(a) The applicant

140. The applicant submitted that the prolonged imposition of the "dangerous detainee" regime had been in breach of Article 3 of the Convention.

He first referred to the quality of the law, i.e. Articles 212a and 212b of the Code of Execution of Criminal Sentences which, in his opinion, defined the grounds for classification as a "dangerous detainee" in a vague and general manner. It was enough, as had happened in his case, to rely on a mere suspicion that he had committed an offence in an organised criminal group to classify him as such and simply extend the regime "automatically" every three months when his situation had been reviewed. The law set no time-limit for the application of the measure, allowing the authorities to extend it indefinitely. Pursuant to Article 7 of the Code, in his appeal he could only contest the lawfulness of the decision on classification. In consequence, it had been legally and practically impossible for him to contest in any meaningful way the continuation of the regime on the grounds given by the Penitentiary Commission because any extension had been lawful as long as the charge involving organised crime had been maintained. In these circumstances, the judicial review of his "dangerous detainee" status had been illusory.

141. Second, the applicant stressed the particular severity of the restrictions to which he had been subjected under the special regime. In his view, they had amounted to an excessive, grossly humiliating and arbitrary interference with the most intimate spheres of his life. To begin with, all his movements in the cell had been constantly monitored, including his dressing, undressing, washing and physiological functions. The very fact that he could be watched by third parties in the toilet, no matter whether the images included all details, had reduced him to an object and stripped him of his dignity.

Every time he had left and entered his cell, usually several times a day and even before and after his solitary walk, he had been subjected to a degrading, exceptionally intrusive and embarrassing personal check by 2 prison guards. He had had to strip naked, had to make deep knee bends and then had been subjected to a body check, including an inspection of his anus. At times when he had been detained with another inmate, a personal check had been carried out in the cell not only in the presence of 2 guards but also the inmate.

Despite the fact that whenever he had been outside his cell he had at all times been accompanied by 2 prison guards, he also had to wear joined

shackles. The applicant found particularly debasing the fact that even though he had been escorted to the Lublin Civil Hospital in shackles and accompanied and watched constantly by 3 policemen, he had remained handcuffed and fettered for many hours during medical examinations.

Furthermore, the authorities had made it next to impossible for him to maintain any kind of human relationship within the prison. He could only have a solitary walk in the prison yard. Despite his numerous complaints about excessive isolation, the authorities had placed another inmate in his cell only for short periods. They had refused all his repeated requests to give him any unpaid work in the prison, to enable him to take part in training or workshops or even to learn foreign languages with the help of his own CDs. Nor had he been allowed to have his own sports equipment or computer games or even a CD player and music CDs in his cell.

142. This nearly complete, immensely stressful and depressing isolation had been compounded by the fact that his contact with the family had also been severely limited. At the initial stage of his detention, from 21 June 2006, when he had been arrested, to 12 March 2007 he had not been allowed to receive any visits from his son. He had not been allowed to receive any visits, even supervised, from A.W., his common-law wife for two years and three months, from 21 June 2006 to 29 September 2008. Over that time he could only have 1 phone conversation with her in January 2007.

143. In conclusion, the applicant submitted that, having regard to the excessively long time – nearly three years – during which he had been detained under the "dangerous detainee" regime and the severity of the restrictions imposed, the authorities had gone beyond what could be considered necessary in the circumstances and had subjected him to treatment contrary to Article 3 of the Convention.

(b) The Government

144. The Government, citing a number of the Court's judgments, stressed that in the present case the treatment complained of had not attained the minimum level of severity required under Article 3. In particular, the alleged suffering involved in the application of the "dangerous detainee" regime in respect of the applicant had not gone beyond the inevitable element of humiliation connected with the imposition of detention on remand on a person considered to have posed a threat to prison security – a legitimate measure that had been fully justified under Polish law.

145. Referring to the applicant's allegations that he had spent most of the time in solitary confinement, the Government pointed to differences between solitary confinement and confinement in a cell designated for a dangerous detainee. In their submission, solitary confinement normally constituted a form of punishment, considered by some to be even a psychological torture, and meant that the person concerned was prevented from any contact with other people, including the prison staff. However, a

cell for a dangerous detainee was simply a cell with higher-level security standards which differed from cells for ordinary inmates.

On 12 October 2007 the applicant had been transferred to the solitary cell (not solitary confinement) in the ward for dangerous detainees, where he had remained throughout the entire period of his detention. In the Government's opinion, this had been a legitimate measure because the applicant, suspected of organising a criminal group, had potentially posed a danger to society and other detainees.

146. The Government further underlined that the applicant had not been totally isolated from other inmates. At his request, between 20 December 2007 and 6 February 2008 he had been placed with a certain L.G. Later, from 29 February to 14 April 2008 and from 6 August to 22 September 2008 he had been placed together with other persons. He had had the possibility of having a 60-minute long walk in the prison yard every day. He could contact his relatives, friends, lawyers or have phone conversations with them. The solitary cell had been equipped with a television set and radio and he had access to the prison library; accordingly, his indirect contact with the outside world had not been restricted. Moreover, the applicant could also contact prison guards on the ward, the guard responsible for his surveillance and a priest.

The circumstances of the case were therefore different from cases where the Court had found a violation of Article 3 on account of solitary confinement, such as *Potoranskiy v. Ukraine* (no. 28812/97, judgment of 29 April 2003), in which the applicant's cell had been closed during 24 hours and far-reaching restrictions had been imposed on his contact with his family. Nor was there any link between this case and *Van der Ven v. the Netherlands* (no. 50901/99, judgment of 4 February 2003), in which the applicant had been totally isolated from the outside world.

147. Relying on the Court's decisions in the cases of *Salvatore v. Italy* (no. 42285/98, decision of 7 May 2002) and *Bastone v. Italy* (no. 59638/00, ECHR 2005-II), the Government submitted that the Court recognised the legitimate need for the authorities to apply special prison regimes in respect of persons involved in organised crime, in particular Mafia-type criminal activity. Those special regimes, in the same way as the one in the present case, served the purpose of cutting the links between the prisoners concerned and their original criminal environment, in order to minimise the risk that they would maintain contact with criminal organisations.

148. As regards the number and nature of visits from family members and other persons, the Government considered that they had been granted often enough to help the applicant to maintain adequate contact and emotional links with his family. All the restrictions had been dictated by the need to secure the interests of the proceedings and, in any event, the applicant had not been treated worse than ordinary detainees.

149. According to the applicable rules laid down in Polish law, i.e. the 2003 Ordinance and Article 212(b) of the Code of Execution of Criminal sentences, the authorities had been obliged to carry out a "personal check" of the applicant every time he had left or entered his cell. The check had comprised an inspection of the body orifices and hollows because these were the places in which detainees would usually smuggle prohibited items. The main aim of such checks was to ensure safety in prison. All the checks had been performed with due respect for the applicant's dignity and had not been intended to humiliate him in any way. The inspection of his body and clothes had taken place in a room in the absence of third parties and persons of the opposite sex. The checks had been conducted by guards of the same sex.

150. The monitoring of the applicant's cell had likewise been lawful. The applicant's cell, as with all the cells for dangerous detainees, had been monitored constantly *via* close-circuit television. However, according to the applicable rules, images had had to be transmitted in a way making it impossible to watch the applicant's private parts or physiological functions.

151. In accordance with Article 212b § 1 (4), a dangerous detainee's movement around a detention facility should be under increased supervision and should be restricted to what was strictly necessary. In consequence, an extraordinary safety procedure, including handcuffing or fettering, applied to such detainees. For that reason, the applicant had had to wear joined shackles outside his cell, including during his appearances before the court and his visit to the Lublin Civil Hospital. That visit had been limited to a medical examination and had not involved a longer stay. The applicant had not suffered any bodily injury through wearing the shackles. It could not therefore be said that the restraint applied had been so harsh as to have raised an issue under Article 3 of the Convention.

152. Nor could it be said, the Government added, that the period during which the applicant had been subjected to the restrictions under the special regime had been excessive in the light of the Court's case-law. In support of that argument, they invoked, *mutatis mutandis*, the judgment in the case of *Argenti v. Italy* (no. 56317/00, of 10 November 2005) in which the Court had found no violation of Article 3 on account of the 12-year long imposition of the special regime on a mafia member, holding that the continued application of similar restrictions had not been disproportionate since the need to maintain them had been justified. This conclusion was valid in the circumstances of the present case, in particular as the need to apply the regime to the applicant had been constantly confirmed by the decisions of the Penitentiary Commission, which had examined the matter every 3 months.

153. Considering the combined effects of the measures involved in the imposition of the "dangerous detainee" regime on the applicant and the fact that they had been necessary given the danger to society posed by him, the

Government concluded that the treatment to which he had been subjected had not been incompatible with Article 3 of the Convention. They invited the Court to find no violation of that provision.

(c) The third party

154. The Helsinki Foundation for Human Rights ("the Helsinki Foundation") began by referring to the Court's case-law concerning complaints about ill-treatment or severe conditions of detention and about restrictions on family life and correspondence from applicants who had been subjected to special, high-security prison regimes. It cited, in particular, the cases of *Van der Ven v. the Netherlands* (no. 50901/99, judgment of 4 February 2003), *Ramirez Sanchez v. France* [GC], no. 59450/00, judgment of 4 July 2006); *Enea v. Italy* [GC], (no. 74912/01, judgment of 17 September 2009); and *Messina (no. 2) v. Italy* (no. 25498/94, judgment of 28 September 2000). In this connection, it pointed out that while there were differences among special security regimes across the respondent States, some general conclusions could be drawn from the relevant judgments. As the Court had stated on many occasions, conditions of detention might amount to inhuman or degrading treatment. In their assessment, account had to be taken of the stringency of the measure, its duration, the objectives pursued and the cumulative effects on the person concerned.

In the above cases the Court had paid special attention to the duration of the measures imposed under high security regimes and had held solitary confinement, even in cases entailing only relative isolation, could not be imposed on a prisoner indefinitely. Moreover, it was essential that the prisoner should be able to have an independent judicial authority review the merits and reasons for a prolonged measure of solitary confinement. The authorities should carry out a reassessment that took into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons needed to be increasingly detailed and compelling the more time had gone by (*Ramirez Sanchez v. France,* §§ 139 and 145).

Accordingly, special high security regimes should be treated as only temporary measures and should be extended only exceptionally – either due to new circumstances or continued existence of previous factors. Under the Court's case-law the authorities were obliged to make a careful evaluation of the prisoner's situation.

155. The Helsinki Foundation accepted that in certain exceptional circumstances the imposition of the "dangerous detainee" regime was inevitable. It also accepted that the protection of society and security of a remand centre, as stipulated in the Code of Execution of Criminal Sentences, could be considered legitimate aims justifying such stringent measures. Nevertheless, there were several aspects of the regime that gave

rise to a serous concern and whose compatibility with Article 3 of the Convention was open to doubt.

The regime entailed a number of serious restrictions enumerated in Articles 88b and 212b of the Code of Execution of Criminal Sentences, which were not mitigated by any solutions aimed at rehabilitation or at least by any educational, sports or cultural activity. In this regard, the third party relied on the CPT report on its 2004 visit in Poland and its conclusion that "regardless of the gravity of the offences of which prisoners [were] accused or ... convicted and/or their presumed dangerousness, efforts must be made to provide them with appropriate stimulation and, in particular, with adequate human contact". This conclusion was prompted by the finding that dangerous detainees' activities had been subject to strict limitations, such as one hour of outdoor exercise per day taken alone or in the company of a cellmate (if any), a weekly visit of 1 to 2 hours to a recreation room and restricted visits from the family.

Moreover, the regime was in general applied for too long and too frequently without sufficient grounds. A review procedure was not based on the proper re-assessment of the situation either. In practice, it turned into a pure formality – a repetition of the same general reasons in each subsequent decision extending the application of the measure. Polish scientific research carried out in relation to the application of the "dangerous detainee" status revealed that reasons given by the Penitentiary Commissions were either general and superficial like the "serious lack of moral character" or illogical like "the "participation in the [prison] subculture" (an activity which could not, by the nature of things, be undertaken by a person isolated from other inmates).

156. In Poland, throughout the application of the regime detainees were subject to hyper-isolation which had several dimensions. The "N" wards were physically separated from the rest of the detention facility and only selected prison staff had access to them. The prisoners were normally kept in complete isolation. Their contact with their family members, other prisoners and even with the prison staff was strictly controlled. Their physical, cultural, educational and other activities were seriously limited. In addition, outside their cells they had to wear "joined shackles" and every time they left and entered their cells they were subjected to a routine personal check, during which they had to strip naked in front of prison guards and carry out deep knee-bends. Their cells were constantly monitored *via* close-circuit television and regularly searched by the guards. Given the degree of isolation and severity of restrictions under the "N" regime, there was an immense difference in comparison to the ordinary prison regime. As a result, the imposition of the "N" regime, especially for a lengthy period, could be regarded as a form of additional punishment, contrary to Article 3 of the Convention.

157. In conclusion, the third party submitted that the cumulative effect of restrictions imposed on "dangerous detainees" taken together with the common practice of continuing the regime without sufficient grounds amounted to a breach of Article 3 of the Convention.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

158. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001; *Öcalan v. Turkey* [GC], no. 46221/99, ECHR 2005- ..., § 179; and *Ramirez Sanchez v. France* [GC], no. 59450/00, ECHR-2006-..., § 115 et seq., with further references).

159. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-IX, § 91).

160. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, among other authorities, *Kudła* cited above, § 92, with further references). The question whether the purpose of the treatment was to humiliate or to debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Van der Ven v. the Netherlands*, no. 50901/99, ECHR 2003-II, § 48).

161. Measures depriving a person of his liberty often involve an element of suffering or humiliation. However, it cannot be said that detention in a high-security prison facility, be it on remand or following a criminal conviction, in itself raises an issue under Article 3 of the Convention. Public-order considerations may lead the State to introduce high-security

prison regimes for particular categories of detainees and, indeed, in many State Parties to the Convention more stringent security rules apply to dangerous detainees. These arrangements, intended to prevent the risk of escape, attack or disturbance of the prison community, are based on separation of such detainees from the prison community together with tighter controls (see, for instance, *Ramirez Sanchez*, cited above, §§ 80-82 and 138; *Messina (no. 2) v. Italy*, no. 25498/94, ECHR 2000-X, §§ 42-54; *Labita,* cited above, §§ 103-109; *Rohde v. Denmark*, no. 69332/01, 21 July 2005, § 78; *Van der Ven*, cited above, §§ 26-31 and 50; and *Csüllög v. Hungary*, no. 30042/08, 7 June 2011, §§ 13-16).

162. While, as stated above, those special prison regimes are not *per se* contrary to Article 3, under that provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding that unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94; and *Van der Ven*, cited above, § 50).

163. The Court, making its assessment of conditions of detention under Article 3, will take account of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II, § 46). In that context, it will have regard to the stringency of the measure, its duration, its objective and consequences for the persons concerned (see *Van der Ven*, cited above, § 51 and paragraph 159 above).

164. Although the prohibition of contacts with other prisoners for security, disciplinary or protective reasons can in certain circumstances be justified, solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. It would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate (see *Ramirez Sanchez*, cited above, §§ 145-146).

165. Furthermore, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision on the continuation of the measure should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by. Indeed, solitary confinement, which is a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules adopted by the

Committee of Ministers on 11 January 2006 (see *Öcalan*, cited above, § 191; *Ramirez Sanchez*, cited above, §§ 139 and 145-146; *Messina (no. 2) v. Italy* (dec), no. 25498/94, ECHR 1999-V, with further references; and *Csüllög v. Hungary*, cited above, § 31).

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

166. The Court notes that the respondent Government and the applicant differed in their accounts of certain details concerning the applicant's detention in the Lublin Remand Centre (see paragraphs 87-88 above). However, these details did not concern the core aspects of the special prison regime imposed on him (see paragraphs 72-86 above).

In particular, there is no dispute over the fact that from 12 October 2007 to 2 July 2010, that is to say for two years and nearly nine months, the applicant was continually classified as a so-called "dangerous detainee" and, in consequence, subjected to high-security measures and various restrictions, pursuant to Articles 212a and 212b of the Code of Execution of Criminal Sentences and the relevant provisions of the 2003 Ordinance (see paragraphs 75-86 and 105-117 above).

It is also uncontested that the measures applied in the applicant's case comprised confinement at a special high-security prison ward in a solitary cell, constant monitoring of his cell – including sanitary facilities – via close-circuit television and increased supervision of his movement within and outside the remand centre, which meant that at all times he had to be escorted by at least 2 prison guards and to wear special "joined shackles". The measures involved his segregation from the prison community except for some periods when he had an inmate in his cell, and limitations on contact with his family together with special arrangements for family visits. Also, every time he left or entered his cell he was subjected to a routine "personal check" – a strip-search, including a thorough inspection of his body and clothes and requiring him to strip naked and make deep knee bends in order to enable an examination of his anus (see paragraphs 75-84 and 105-117 above).

167. The parties disagreed, however, on whether the adverse consequences of the imposition of the above measures on the applicant had been so serious as to attain the minimum level of severity required by Article 3 of the Convention (see paragraphs 140-157 above).

168. The Court notes that the applicant first referred to the quality of the law which governed the special regime, submitting that the relevant statutory grounds set out in Articles 212a and 212b of the Code of Execution of Criminal Sentences were vague and general. He stressed that a mere suspicion that he had committed an offence in an organised criminal group had sufficed to classify him as a "dangerous detainee" and extend continually the imposition of the regime (see paragraph 140 above).

Indeed, pursuant to Article 212a § 3, if a detainee is suspected of an organised-crime offence, the authorities have to apply the regime and, consequently, all the security measures enumerated in Article 212b, unless particular circumstances militate against this (see paragraphs 105 and 106 above). The legal formulation of the rule and exception to it could, in the Court's view, generally result in an over-inclusive regime. This conclusion goes hand in hand with the findings of the 2009 CPT report, which underlined that the procedure for allocating a prisoner to "N" status fails to ensure that only those who pose an ongoing high risk if accommodated in the mainstream prison population are accorded this status (see paragraph 130 above). Also, given the absence of any provisions linking that status with a person's actual behaviour in prison, the legal framework of the "N" regime seems to be too rigid and not sufficiently oriented towards individual circumstances of a particular detainee.

However, it is not the Court's role to assess the application of the restrictions under the regime in the abstract but to ascertain whether their cumulative effects on the applicant were incompatible with Article 3 of the Convention.

169. Turning to the facts of the present case, the Court notes that while the applicant was charged with and then convicted of drug trafficking, money laundering and obtaining a loan by deception, as well as acting in an organised criminal group, he has never been convicted of any violent crime (see paragraphs 8, 24, 31-32 and 75 above). Nevertheless, the Court accepts that the initial decision of 12 October 2007 imposing the "N" regime on the applicant already at the pre-conviction stage was legitimate. In the circumstances, it was not unreasonable on the part of the authorities to consider that, for the sake of ensuring safety in prison, he should be subjected to tighter security controls, involving increased and constant supervision of his movements within and outside his cell, limitations on his contact and communication with the outside world and some form of segregation from the prison community.

As the Court has already held in similar cases concerning organised crime, in particular those lodged by persons linked to Mafia-type organisations, the existing, continuing danger that an applicant may re-establish contact with criminal organisations is an element that may justify applying even harsh isolation measures in order to exclude such a possibility (see, for instance, *Messina (no. 2)* (dec.), cited above). In the applicant's case that possibility had to be taken into account.

Also, the monitoring of a detainee's behaviour via close-circuit television at all times, as in the present case, although certainly intrusive, is not *per se* incompatible with Article 3. This measure serves the purposes of both ensuring prison security and protecting the detainee himself from the risk of pressure or even physical attack by the criminal community which, in the context of organised crime, cannot be excluded.

170. However, for the reasons stated below, the Court cannot accept that the continued, routine and indiscriminate application of the full range of measures that the authorities were obliged to apply under the "N" regime for two years and nine months was necessary for maintaining prison security and compatible with Article 3 of the Convention.

171. It is true, as the Government pointed out (see paragraphs 145-148 above), that although the applicant was held in a solitary cell at a special high-security ward separated from the rest of the prison, he was not subjected to complete sensory or social isolation as there were three periods, each lasting around six weeks, during which he had another cellmate placed with him. He maintained a degree of daily contact with the prison staff, even if only limited, for the sake of a daily walk (see paragraphs 107-108 and 146 above). He also received family visits, had meetings with his lawyers (see paragraphs 54-71 above) and had access to the television and prison library (see paragraph 146 above). Accordingly, he was not subjected to total isolation but rather to a limited social isolation (see *Messina (no. 2)* (dec.), cited above; and *Ramirez Sanchez*, cited above, § 135).

The list of visits received by the applicant in detention shows that, up to 19 January 2010, he had had 147 visits altogether, out of which 102 took place after the special regime was imposed on him (see paragraphs 68-71 above). The number of family visits over that period stood at 45 and the remaining were meetings with his lawyers or other meetings connected with the criminal proceedings against him (see paragraph 71 above). This, even considering that the visits were spread over more than two years, must have attenuated, at least to some extent, the consequences of the separation from others and daily solitude for the applicant's mental and emotional well-being.

Nevertheless, given the nature and extent of the other restrictions, the family visits or meetings with the lawyers could not alone mitigate sufficiently the cumulative, adverse effects of the imposition of the "dangerous detainee" regime on the applicant.

172. As the CPT pointed out in its two reports of 2004 and 2009, not only was the regime itself very restrictive but also the Polish authorities in general failed to provide "N" ward inmates with appropriate stimulation and, in particular, with adequate human contact (see paragraphs 129-132 and 155 above). In the 2009 report the authorities were explicitly criticised for not having developed "a structured programme of constructive and preferably out-of-cell activities". It was recommended that "educators and psychologists should be proactive in working with "N" status prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day" (see paragraph 129 above). The CPT also pointed out that "placement in an "N" unit should not be a purely passive response to the prisoner's attitude and behaviour" (see paragraph 130 above).

173. In the Court's view, the circumstances of the present case fully confirm the CPT's observations.

It does not appear that the authorities made any effort to counteract the effects of the applicant's isolation by providing him with the necessary mental or physical stimulation except for a daily, usually solitary walk in the segregated area and access to the television and library. Throughout his confinement in the high-security ward the applicant made numerous – but never successful – requests to the prison authorities, asking them to enable him to take part in any training, workshops, courses or any sports activities organised for ordinary inmates or to give him any unpaid work. No such activity was made available to him. In reaction to his complaints that isolation from other people was putting an exceptionally severe strain on him, the authorities said that the need to socialise with others was not a ground for qualifying for participation in activities in prison (see paragraphs 84-85 above). They were similarly inflexible when he asked for permission to have in his cell his own sports equipment, computer games, CD-player and CDs with foreign language courses and music (see paragraph 84 above), even though such a minor concession could by no means threaten prison safety.

In this regard, the Court would recall that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in a deterioration of mental faculties and social abilities (see *Csüllög v. Hungary*, cited above, § 30, with further references). Considering the duration of the regime imposed on the applicant and the very limited possibilities available to him for physical movement and social contact, the Court has no doubt that the lack of any meaningful response to his repeated complaints about his solitude and exclusion must have caused him feelings of humiliation and helplessness (see also paragraph 82 above).

174. The negative psychological and emotional effects of his social isolation were aggravated by the routine application of other special security measures, namely the shackling and strip searches.

To begin with, the Court is not convinced that shackling the applicant on leaving his cell – which was a matter of everyday procedure unrelated to any specific circumstances concerning his past or current behaviour – was indeed necessary on each and every occasion. Moreover, in contrast to a personal check, which the authorities are expressly obliged to carry out pursuant to Article 212b § 1(5), putting joined shackles on a detainee should be limited only to "particularly justified cases" (see paragraph 106 above). It does not appear that there was a permanent need to do so in the applicant's case, given that in the prison he remained in a secure environment and other means of direct and indirect control of his behaviour were at the same time applied (see paragraphs 107-108 and 112-117 above).

175. The Court has even more grave misgivings in respect of the personal check to which the applicant was likewise subjected daily, or even several times a day, whenever he left or entered his cell. The strip-search, involving an anal inspection, was carried out as a matter of routine and was not linked to any concrete security needs, nor to any specific suspicion concerning the applicant's conduct. It was performed despite the fact that outside his cell and the "N" ward the applicant could move around the remand centre only by himself, his mobility was restricted due to his wearing joined shackles on hands and feet all the time and he had to be permanently and directly supervised by at least 2 prison guards. In addition, as already mentioned above, his behaviour in the cell, including his use of sanitary facilities, was constantly monitored *via* close-circuit television (see paragraphs (76, 77, 82, 106-108, 110 and 112-117 above).

In this connection, the Court would again refer to the CPT report of 2009 in which it expressed its considerable concern about the practice of strip-searches applied to persons classified as dangerous detainees, in the following way: "[t]he CPT also has serious misgivings about the systematic practice of obliging "N" status prisoners to undergo routine strip-searches whenever entering or leaving their cells. The prisoners concerned had to undress completely, and squat fully naked in view of the guards and any prisoner(s) sharing the cell while their clothes were examined. In the CPT's opinion, such a practice could be considered amounting to degrading treatment." (see paragraphs 131-132 above).

176. The Court agrees that strip-searches may be necessary on occasion to ensure prison security or to prevent disorder or crime (see *Iwańczuk v. Poland,* no 25196/94, 15 November 2001, § 59; and *Van der Ven*, cited above, § 60, with further references). However, it is not persuaded by the Government's argument that such systematic, intrusive and exceptionally embarrassing checks performed on the applicant daily, or even several times a day, were necessary to ensure safety in prison (see paragraph 149 above). Nor does it share their view that the absence of an intention to humiliate the applicant on the part of the authorities justified that treatment (see paragraph 160 above).

Having regard to the fact that the applicant was already subjected in addition to several other strict surveillance measures, that the authorities did not rely on any concrete convincing security needs and that, despite the serious charge against him, he apparently did not display any disruptive, violent or otherwise dangerous behaviour in the remand centre, the Court considers that the practice of daily strip-searches applied to him for two years and nine months must have diminished his human dignity and caused him feelings of inferiority, anguish and accumulated distress which went beyond the unavoidable suffering and humiliation involved in the imposition of detention on remand (see *Van der Ven,* cited above, § 62 and paragraph 160 above).

177. Lastly, the Court would add that due to the strict, rigid rules for the imposition of the special regime and the vaguely defined "exceptional circumstances" justifying its discontinuation laid down in Article 212a § 3 of the Code of Execution of Criminal Sentences, the authorities, in extending that regime, were not in fact obliged to consider any changes in the applicant's personal situation and, in particular, the combined effects of the continued application of the impugned measures (see paragraphs 105 and 168 above). Those rules – and this was also noted by the CPT – do not provide for adequate solutions enabling the authorities, if necessary, to adjust the regime to individual conduct or to reduce the negative impact of social isolation (see paragraphs 105-108 and 129-130 above).

In the present case the authorities did not ever refer to any likelihood of the applicant's escaping in the event of his being detained under a less strict regime. However, neither the apparent absence of such risk, nor the adverse emotional and mental effects of isolation as alleged by the applicant, were considered circumstances sufficient to justify lifting any of the strict measures applied under the regime (see paragraphs 81-84 above). In that context, the Court would again recall that, as stated above (see paragraph 165 above), in cases involving solitary confinement the authorities should act with special caution in imposing that measure and should examine carefully all the specific circumstances militating for or against its continuation.

In contrast, it emerges from the authorities' decisions that, apart from the original grounds based essentially on the serious nature of the charges against the applicant, including "the suspicion that he had a very high rank in organised crime structures" and "displayed a serious lack of moral character" they found or considered any other reasons for classifying the applicant as a "dangerous detainee" (see paragraphs 75, 81 and 83 above). While, as said above, those circumstances could initially warrant the imposition of the "N" regime on the applicant (see paragraphs 169-170 above), they could not suffice as a sole justification for its prolonged continuation. As pointed out by the applicant and the third party (see paragraphs 140 and 155 above), with the passage of time the quarterly procedure for review of his "dangerous detainee" status became a pure formality limited to a repetition of the same grounds in each successive decision.

178. In conclusion, assessing the facts of the case as a whole and considering the cumulative effects of the "dangerous detainee" regime on the applicant, the Court finds that the duration and the severity of the measures taken exceeded the legitimate requirements of security in prison and that they were not in their entirety necessary to attain the legitimate aim pursued by the authorities.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

179. The applicant's second complaint under Article 3 of the Convention concerned the harsh conditions of his detention. In particular, he complained about the lack of natural light and ventilation in the cell, which was very small, the fact that the authorities had provided him with light, inadequate clothes and the fact that the furniture was permanently fixed to the floor. He also submitted that during certain periods he had been kept in overcrowded cells.

A. The Government's preliminary objection on non-exhaustion of domestic remedies

180. The Government submitted that the applicant had lodged a civil action for the infringement of his personal rights, in particular dignity, caused by the conditions of his detention under Article 24 read in conjunction with Article 448 of the Civil Code. The relevant proceedings were pending and, consequently, the applicant still had an opportunity to obtain redress for the violation of the Convention at domestic level.

In view of the foregoing, they asked the Court to reject the complaint for non-exhaustion of domestic remedies.

181. The applicant confirmed that he had filed civil proceedings for compensation for the infringement of his personal rights on account of the degrading conditions of his detention and that those proceedings were pending.

B. The Court's assessment

182. In the context of Polish cases involving complaints about conditions of detention, including overcrowding, the Court has already held that, in cases where an applicant has been either released or placed in conditions compatible with the requirements of Article 3 of the Convention, a civil action under Article 24 read in conjunction with Article 448 of the Civil Code can be considered an effective remedy for the purposes of Article 35 § 1 of the Convention. However, given that the relevant practice of the Polish civil courts developed gradually over time, the Court held that this remedy could be regarded as effective only as from 17 March 2010. It also held that only those applicants in respect of whose civil claims the 3-year limitation period as set by the Polish law had not yet expired were required to make use of the civil action relied on by the Government (see *Orchowski v. Poland,* no. 17885/04, ECHR 2009-..., § 154; and *Łatak v. Poland* (dec.) no. 52070/08, ECHR 2010..., §§ 79-81 and 85).

183. In the present case the applicant, who was released from detention on 2 July 2010 (see paragraph 37 above), had lodged an action for compensation under Article 24 and 448 of the Civil Code already when he was still held in custody – on 15 February 2008. The relevant proceedings are pending (see paragraph 100 above). Accordingly, he can still obtain redress for the alleged breach of Article 3 of the Convention before the domestic courts in so far as it relates to these specific complaints.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE APPLICANT'S DETENTION

185. The applicant further complained under Article 5 § 3 of the Convention about the unreasonable length of his pre-trial detention and the fact that the courts had failed to give sufficient and relevant reasons for keeping him in custody.

Article 5 § 3, in so far as relevant, reads as follows:

> ""Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

186. The Government made no specific comments on the admissibility of the complaint.

A. Admissibility

187. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

188. The applicant was detained on remand in three parallel sets of criminal proceedings against him. The applicant's detention continued without any interruption under three subsequent detention orders (see paragraphs 8-37 above). It started in the first set of proceedings on 21 June 2006, when he was arrested on suspicion of drug trafficking (see paragraph 8 above). On 22 June 2006 the Lublin District Court remanded

him in custody on suspicion of robbery, theft and unlawful detention (see paragraph 24 above). On 10 October 2007 the Lublin Regional Court detained him in the third set of proceedings, involving the charges of setting up and leading an organised criminal group (see paragraph 32 above). In the second set of proceedings the applicant's detention was lifted on 21 June 2008 and in the first set on 24 October 2008 (see paragraphs 21 and 30 above); however, in the third set of proceedings he remained in pre-trial detention until 2 July 2010, when he was released on bail, under police supervision and under an order imposing on him a ban on leaving the country (see paragraph 37 above).

Accordingly, given that where an accused person is detained for two or more separate periods pending trial, the reasonable time guarantee of Article 5 § 3 requires a global assessment of the cumulative period (see, among other authorities, *Mitev v. Bulgaria,* no. 40063/98, 22 December 2004, § 102, with further references), the term to be taken into consideration amounts to four years and ten days.

2. The parties' submissions

(a) The applicant

189. The applicant maintained that the length of his pre-trial detention was excessive and unreasonable. He stressed that the Polish courts failed to give valid reasons for keeping him in custody for the entire period of more than four years and that their decisions had been a repetition of the same grounds.

(b) The Government

190. The Government, having regard to the Court's case-law concerning similar cases, refrained from making observations on the merits of the applicant's complaint. However, they asked the Court to take into account the fact that the applicant had been detained simultaneously in parallel criminal proceedings against him.

3. The Court's assessment

(a) General principles

191. The Court recalls that the general principles regarding the right "to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland*, cited above, § 110 *et seq.*; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

192. In their detention decisions given in all the proceedings against the applicant, the authorities, in addition to the reasonable suspicion against the applicant, relied continually on four principal grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable, which was also justified by the fact that he was a recidivist offender, (3) the complex nature of the cases (4) the need to secure the proper conduct of the proceedings in view of the risk that the applicant might attempt to obstruct them by bringing pressure to bear on witnesses or suspects (see paragraphs 9, 11, 16, 24, 26, 29, 32, 34 and 36 above).

193. The applicant was charged with several offences involving, among other things, drug trafficking and setting up and leading an organised criminal group (see paragraphs 8, 12, 22, 32, 35 and 38 above).

Even though he was acquitted in the second set of proceedings involving the charges of robbery, theft and unlawful detention (see paragraph 31 above), the Court considers that the fact that the two other cases concerned organised crime should be taken into account in assessing compliance with Article 5 § 3 in the present case (see *Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007).

194. The Court accepts that the reasonable suspicion against the applicant of having committed the above-mentioned serious offences could initially warrant his detention. Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, and other voluminous evidence and to determine the degree of the alleged responsibility of each of the defendants, who had acted in a criminal group, constituted valid grounds for the applicant's initial detention.

195. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high. In this respect, the Court notes, however, that the domestic courts, apart from repeatedly referring to that risk in general terms, did not mention any concrete circumstance indicating that the applicant had ever made attempts to intimidate any witness or defendant at any stage of the proceedings or that, by his obstructive behaviour, tried to delay the trial or disrupt its course (see paragraphs 9, 11, 16, 24, 26, 29, 32, 34 and 36 above).

According to the authorities, the likelihood of a severe sentence being imposed on the applicant was also a ground for his continued detention (see paragraphs 16, 24 and 34). However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by

itself justify long periods of detention on remand (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

196. While all those above factors could warrant even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. In this context, the Court would observe that despite the fact that in the case involving robbery, theft and unlawful detention the applicant's detention was lifted already in June 2008 (which was followed by a verdict of acquittal on 2 July 2009) and in the case involving drug trafficking on 24 October 2008, he was still held in custody in the third case for some two further years (see paragraphs 21, 30-31 and 37 above). In consequence, the length of his detention – four years and ten days – came close to the cumulative sentences of five years' imprisonment imposed on him in the first and in the third set of proceedings (see paragraphs 22 and 38 above).

197. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF THE LACK OF EQUALITY OF ARMS IN THE PROCEDURE FOR THE EXTENSION OF THE APPLICANT'S PRE-TRIAL DETENTION

198. The applicant further complained that in the case involving the charge of setting up an organised criminal group (case no. VI Ds 54/07/S; IV K 394/08) the proceedings for the extension of his pre-trial detention had not been adversarial in that he could not effectively challenge the lawfulness of his continued detention because he had been refused access to the investigation file. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

199. The Government made no observations on the admissibility of the above complaint.

A. Admissibility

200. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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' arguments

(a) The applicant

201. The applicant submitted that the repeated refusals to grant him access to the case file in respect of evidence on which the prosecution had relied in the proceedings for the extension of his detention on remand were incompatible with the principle of equality of arms. In each of their requests for his detention to be prolonged pending the outcome of the investigation, the prosecution had referred to evidence and circumstances relevant for the suspicion against him. Those elements were unknown to him. The grounds given for his detention were vague and, without at least some basic knowledge of evidence justifying the alleged risk that he would obstruct the proceedings or bring pressure to bear on witnesses repeatedly invoked by the authorities, it was impossible for him to challenge in any meaningful way the lawfulness of his detention or to respond to the prosecutor's arguments. He invited the Court to find a breach of Article 5 § 4 of the Convention.

(b) The Government

202. The Government stated that they wished to refrain from expressing their opinion on the merits of the complaint.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

203. Proceedings conducted under Article 5 § 4 of the Convention before the court examining an appeal against detention must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Equality of arms is not ensured if the applicant, or his counsel, is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his detention (see, among other authorities *Schöps v. Germany*, no. 25116/94, § 44, ECHR 2001-I; *Svipsta v. Latvia*,

no. 66820/01, § 129, ECHR 2006-...; and *Mooren v. Germany* [GC] no. 11364/03, ECHR 2009-..., § 124, with further references).

Any restrictions on the right of the detainee or his representative to have access to documents in the case file which form the basis of the prosecution case against him must be strictly necessary in the light of a strong countervailing public interest. Where full disclosure is not possible, Article 5 § 4 requires that the difficulties this caused are counterbalanced in a way that the individual still has a possibility effectively to challenge the allegations against him (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, ECHR 2009-..., § 205).

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

204. Having regard to its case-law and to the fact that the applicant was denied access to documents relating to the circumstances justifying his detention without any consideration being given to measures which could have counterbalanced the lack of disclosure (see paragraphs 33-35 and 40-50 above), the Court finds that the procedure whereby he sought to challenge the lawfulness of his pre-trial detention was in breach of Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF RESTRICTIONS ON CONTACT WITH THE FAMILY DURING DETENTION

205. The applicant further complained under Article 8, submitting that continued, severe restrictions on visits from his family throughout his detention, in particular the deprivation of contact with his son and common-law wife for months at a stretch, put an exceptionally severe strain on him and led to the loss of his family life in detention.

Article 8, in so far as-relevant, reads as follows:

> ""1. Everyone has the right to respect for his ... family life... .
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

206. The Government contested that argument.

A. Admissibility

207. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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' arguments

(a) The applicant

208. The applicant submitted that the authorities had been fully aware that A.W., his common-law wife and M.P., their son, who at the relevant time had been 2-3 years old, were for him the emotionally closest persons, but they had for many months denied him contact with them without sufficient reasons. In particular, he referred to the fact that at the initial stage of his pre-trial detention he could not see his son for some 9 months and that subsequently, in 2007, there was a period of several months when he had again not been allowed to receive visits from his son. On several occasions he had had no direct contact with the child because he had been separated from him by a Perspex partition and they could communicate only by internal phone. Except for one phone call in January 2007, he had been deprived of any contact with his common-law wife for 27 months following his arrest. In addition, for a considerable time he had not been allowed to see his mother either.

209. Even if the authorities considered that his visits from A.W. should be limited because she had later been charged in the same proceedings, they could at very least have allowed them some indirect or supervised contact, rather than impose a complete ban on visits and other communication for more than two years. Moreover, the applicant added, he could see no reason, except for a deliberate attempt to make him suffer gratuitously, why he had been denied contact with his son, a little child who certainly could do no harm to security in prison or to impede the proper course of the proceedings against him.

The applicant concluded that the duration and severity of those restrictions had ruined his family life in detention and caused him serious emotional distress and suffering. The authorities had interfered with his rights under Article 8 in an arbitrary and disproportionate fashion. He asked the Court to find a violation of this provision.

(b) The Government

210. The Government acknowledged that during the applicant's detention his right to family visits had been limited and that the restrictions imposed had amounted to an interference with his rights under Article 8 of the Convention. However, in their view, the measures applied were in accordance with the law, namely Article 217 § 1 of the Code of Execution of Criminal Sentences, and necessary for the purposes of that provision.

Referring to the Court's case-law on the matter, in particular the case of *Messina (no. 2) v. Italy* (cited above), the Government underlined that the applicant had been involved in organised crime and, in consequence, there had been serious indications that his communication with other persons, including his close family, required to be restricted. Thus, A.W. had been his co-accused in the first set of proceedings against him.

211. It should also be noted, the Government further argued, that the restrictions had been lifted with the passage of time and at a later stage A.W. and the applicant's son had then visited him every two weeks. Moreover, the list of visits received by the applicant in the remand centre, produced by the Government, showed that throughout his detention he had received 147 visits from various persons, which had certainly reduced the consequences of the initial limitations.

In view of the foregoing, the Government considered that there had been no violation of Article 8 of the Convention.

2. The Court's assessment

(a) Principles deriving from the Court's case-law

212. Detention, likewise any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see *Messina (no. 2)*, cited above, § 61).

Such restrictions as limitations put on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection – as happened in the present case – of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision.

Nevertheless, any restriction of that kind must be applied "in accordance with the law", must pursue one or more legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society" (ibid. §§ 62-63; and *Klamecki (no. 2) v. Poland*, no. 31583/96, 3 April 2003, § 144, with further references).

The expression "in accordance with the law" not only necessitates compliance with domestic law, but also relates to the quality of that law. Consequently, domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (see, *Domenichini v. Italy,* 15 November 1996, § 33, *Reports* 1996-V; and, among other examples, *Nurzyński v. Poland* no. 46859/06, 21 December 2010, § 36, with further references).

As to the criterion "necessary in a democratic society", the Court would reiterate that the notion of "necessity" for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. Assessing whether an interference was "necessary" the Court will take into account the margin of appreciation left to the State authorities but it is a duty of the respondent State to demonstrate the existence of the pressing social need behind the interference (see, among other examples, *McLeod v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2791, § 52; and *Bagiński v. Poland* no. 37444/97, 11 October 2005, § 89, with further references).

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

(i) Findings of fact

213. The parties gave partly different descriptions of certain facts concerning the applicant's contact with his family (see paragraphs 54-71 above).

As regards contact with his son, M.P., the applicant submitted that he had been refused visits from the child between 21 June 2006 and 12 March 2007, whereas the Government maintained that he had not asked for such visits over that period (see paragraphs 54 and 59 above). However, according to a declaration of 26 November 2007, which was made by the applicant's defence counsel and which at no stage of the procedure before the Court was contested by the Government, the counsel repeatedly, albeit unsuccessfully, requested the authorities to allow the applicant to receive visits from the son at the relevant time. That declaration also confirms that the applicant eventually received permission for the first such visit in March 2007 (see paragraph 62 above).

Furthermore, while the parties phrased their statements differently, it is also evident that from 10 October to 3 December 2007 the applicant was again unable to see his son (see paragraphs 57 and 60 above).

214. On the other hand, there is no dispute over the fact that from 2 June 2006 to 29 September 2008, i.e. for some two years and three months the applicant was not allowed to receive visits for A.W., his common-law wife (see paragraphs 63 and 64 above).

(ii) Existence of interference

215. The Government acknowledged that the above limitations on the applicant's contact with his family had constituted an "interference" with his rights under Article 8 (see paragraph 208 above). The Court sees no reason to hold otherwise.

(iii) Whether the interference was "in accordance with the law"

216. The Court would first refer to Article 217 § 1 of the Code of Execution of Criminal Sentences, relied on by the Government as a legal basis for the impugned restrictions (see also paragraphs 118-122 above). That provision was found by the Polish Constitutional Court unconstitutional in that it did not indicate with reasonable clarity the scope and manner of the exercise of discretion conferred on the relevant authorities to restrict visiting rights. In consequence, in similar Polish cases the Court has held that an unreasoned refusal to grant visit permissions was not in "accordance with the law" and found a breach of Article 8 on account of the arbitrariness of the interference (see, for instance, *Wegera v. Poland*, no. 141/07, § 74-75, 19 January 2010; *Gradek v. Poland* no 39631/06, §§ 47-48, 8 June 2010; and *Nurzyński*, cited above, §§ 41-42).

217. In contrast, in cases where the authorities gave reasons for their decisions in writing, the Court has considered that the refusal of visit permission was not arbitrary and, assuming that the measure was lawful for the purposes of Article 8 § 2, examined whether the other requirements of that provision were respected (see *Lesiak v. Poland* no. 19218/07, §§ 76-77, 1 February 2011; and *Bystrowski v. Poland*, no. 15476/02, 13 September 2011, §§ 67-68).

218. In the present case the authorities, in their written responses to the applicant's and his counsel's requests for visit permissions, explained the circumstances which, in their view, militated against granting requests at the relevant time (see paragraphs 62-63 above). Consequently, the restrictions complained of can be regarded as having been applied "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

(iv) Whether the interference pursued a "legitimate aim" and was "necessary in a democratic society"

219. The Court notes that the authorities' refusals of visit permissions for the applicant's son were prompted by "the child's interest and the possibility of obtaining additional evidence or new facts from [the applicant]". While the latter ground seems to have no relevance for denying

contact with the applicant's child, who obviously had nothing to do with the proceedings against the applicant, the reliance on "the child's interest" can be considered to fall within "the protection of the rights ... of others" within the meaning of Article 8 § 2.

The restrictions on contact with the common-law wife were based on the fact that she was indicted together with the applicant in the first set of criminal proceedings against him (see paragraph 63 above). They can accordingly be regarded as applied in pursuance of "the prevention of disorder or crime", which is a legitimate aim under that provision.

220. As stated above, detention entails inherent limitations on the detainee's private and family life, including restrictions on the number of family visits or, if so justified by the nature of the offence, special arrangements for such visits (see paragraph 212 above).

The Court therefore accepts that, given that the applicant's common-law wife was charged and then indicted in the same proceedings, the authorities had to restrict their contact to secure the process of obtaining evidence. At the initial stage of the procedure even the resort to a total prohibition of communication could be considered necessary for achieving the aim sought by the authorities, although it inevitably resulted in harsh consequences for the applicant's family life. However, with the passage of time and having regard to the stringency of the measure, as well as the authorities' general obligation to enable the applicant to have contact with the family during his detention (see paragraph 212 above), the situation called for a careful review of the necessity of keeping him in complete isolation from his common-law wife (see *Bagiński*, cited above, § 96).

It is to be noted that for two years and three months the applicant had only one 60-minute long conversation with A.W., which took place at the beginning of his detention, on 8 January 2007 (see paragraphs 63-64, 70 and 213 above). At the same time, visits from his child were first refused and then limited (see paragraphs 54-62, 70 and 213 above) and contact with his mother was likewise restricted (see paragraphs 65-67 and 70 above). In addition, as established above, the applicant was placed in a solitary cell for the most part of his detention (see paragraphs 76, 80 and 166 above). In the circumstances, the authorities could not have been unaware that the prolonged and absolute ban on the applicant's contact with his common-wife must have had a particularly serious and negative impact on his family life. Despite that, throughout the entire period they never considered any alternative means of ensuring that the applicant's contact with A.W. would not lead to any collusive action on their part or otherwise obstruct the proceedings against them. Such alterative solutions are explicitly provided for by the Code of Execution of Criminal Sentences. If the authorities were convinced that an "open visit" enabling the applicant direct physical contact and unrestricted conversation with A.W. could not be allowed for the sake of the interests of the proceedings, they had a choice between, for instance,

subjection of their contact to supervision by a prison guard, i.e. a "supervised visit" and granting a "close visit" without the possibility of direct contact. It was open to them to impose other specific conditions on the nature, frequency and length of visits (see paragraphs 118-119 above). In consequence, having regard to the considerable duration and severity of the restrictions, the Court concludes that they went beyond what could be regarded as necessary in a democratic society "for the prevention of disorder and crime".

221. It remains for the Court to ascertain whether the limitations imposed on the applicant's contact with his son were justified under Article 8 in terms of their necessity.

The Court agrees that, considering the age of the child at the relevant time (see paragraph 54 above), the authorities needed to ensure that he was accompanied by an adult third party who also had to be eligible for visit permission. By the nature of things, visits from children or, more generally, minor persons in prison require special arrangements and may be subjected to particular conditions depending on their age, the possible effects on their emotional state or well-being and on the personal circumstances of a visited person. Since the applicant was classified as a "dangerous detainee", the authorities had to take this factor into account in deciding on the form of his contact with the son. Some restrictions were therefore inevitable. However, as apparently the suitable third party offered to assist the applicant's son during visits and there was no indication that visits in prison actually had, or might have had, any adverse effects on the child (see paragraphs 55-61 above), all the circumstances taken together did not justify the blanket refusal of visit permissions for some 9 months in 2006-2007 and, subsequently, for 2 months between October and December 2007. For that reason, the Court sees no force in the Government's arguments as to the necessity of the restrictions. Indeed, it finds it inconceivable that, provided that the appropriate arrangements for security were made, allowing the applicant to have contact with his infant child could upset security in prison or the proper course of the proceedings against him. Nor does the Court find that, as the Government argued (see paragraph 211 above), the fact that at a later stage the ban on the family visits was lifted and regular contact resumed, could sufficiently alleviate the consequences of the earlier, strict measures.

222. In view of the foregoing, the Court concludes that the prolonged restrictions on the applicant's contact with his common-law wife and son were excessive and cannot be justified as "necessary in a democratic society".

Accordingly, there has been a violation of Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF CENSORSHIP OF THE APPLICANT'S CORRESPONDENCE

223. The applicant further alleged a breach of Article 8 on account of the continued censorship of his correspondence with various public authorities and his legal-aid counsel.

Article 8, in so far as relevant, states:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

224. The Government, as they did in a number of previous similar cases involving complaints about routine censorship of a detainee's correspondence, argued that the applicant failed to comply with the requirements of Article 35 § 1 because he had not lodged an action for the protection of his personal rights under Article 24 read in conjunction with Article 448 of the Civil Code. In essence, they repeated the observations that they had already made in other cases (see, for instance, *Lewak v. Poland*, no. 218990/03, 6 September 2007, §§ 21-22; *Misiak v. Poland*, no. 43837/06, 3 June 2008, §§ 15-16; *Pasternak v. Poland*, 42785/06, 16 July 2009, §§ 24-26; and *Bišta v. Poland*, no. 22807/07, 12 January 2010, § 26), maintaining that it had been open to the applicant to obtain redress at domestic level by means of that remedy.

225. The applicant said that it was for the Court to decide on the admissibility of this complaint. Nevertheless, he stressed that at the time of lodging his application he had not been aware of the existence and availability of the remedy advanced by the Government.

2. The Court's assessment

226. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires an applicant first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in

respect of the alleged breach (see *Biśta*, cited above, § 44, with further references).

However, that rule also 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 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, *Łatak* (dec.), cited above, § 76, with further references).

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 but it is subject to exceptions which may be justified by the particular circumstances of the case. What is relevant in cases where a national remedy became effective after the introduction of the application but before the Court's decision on admissibility is whether the applicant is able to make an effective and meaningful use of it, including whether, in practical terms, he has adequate time in order to have realistic recourse to the remedy in question (see *Łatak* (dec.), cited above, §§ 79-81 and 85).

227. It is true that in its judgment in the case of *Biśta v. Poland* and other rulings that followed, the Court held that applicants with complaints based on similar interferences with detainees' correspondence which occurred after 28 June 2007 were, in order to comply with Article 35 § 1, required to avail themselves of an action for the infringement of personal rights under Article 24 read in conjunction with Article 448 of the Civil Code (see *Biśta*, cited above, § 49). However, the applicant in that case could still effectively use the remedy because the 3-year limitation period for bringing such an action had not yet expired (ibid. §§ 47-48).

228. In contrast, since in the present case the alleged interferences took place in the period from 2 August 2006 to 16 August 2007 (see paragraph 52 above), the statutory limitation period expired on 16 August 2010 at the latest. In consequence, the applicant's action is already time-barred and, as such, ineffective. Moreover, the application was introduced on 12 April 2007 which was, first, before 28 June 2007, the date on which the remedy acquired effectiveness for the purposes of Article 35 § 1 (see *Biśta*, cited above, §§ 47-49) and, second, before 12 January 2010 when the Court's ruling in *Biśta* was delivered.

229. Accordingly, in the particular circumstances of the case the applicant cannot be required to use the remedy relied on by the Government as it would obviously not be "effective" within the meaning of Article 35 § 1 of the Convention.

The Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must therefore be rejected.

B. Merits

1. The parties' arguments

(a) The applicant

230. The applicant submitted that all his correspondence, no matter what had been the subject matter and who had been the addressee, had been routinely censored under the provisions of the Code of Execution of Criminal Sentences for the sole reason that he had been in detention. He could not see any convincing reason, in particular such as the interests of the proceedings against him, for opening and controlling the contents of letters from the police and prison authorities, his defence counsel and from the European institutions, including the CPT.

(b) The Government

231. The Government did not make any observations on the merits of the complaint.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

232. The Court reiterates that any "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence will contravene Article 8 § 1 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society" in order to achieve them (see, among many other authorities, *Enea v. Italy* [GC], no. 74912/01, ECHR 2009-..., § 140, with further references and *Jarkiewicz v. Poland*, no. 23623/07, 6 July 2010, § 72, with further references).

However, the Court has also recognised that some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (see, among other authorities, *Campbell v. the United Kingdom*, 15 March 1992, Series A, no. 233, § 45).

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

(i) Existence of interference

233. The applicant has produced seven envelopes of the letters stamped "censored" that he had received from various national and international institutions and his defence counsel (see paragraph 52 above). The Government did not address the issue (see paragraph 229 above).

234. The Court has already held on many occasions that as long as the Polish authorities continue the practice of marking detainees' letters with the "censored" stamp, it has no alternative but to presume that those letters have been opened and their contents read (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003; *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005; *Michta v. Poland*, no. 13425/02, § 58, 4 May 2006; and *Friedensberg v. Poland,* no. 44025/08, 27 April 2010, § 36). There has accordingly been an interference with the applicant's right to respect for his correspondence for the purposes of Article 8.

(ii) Letters from the Main Police Headquarters, the Central Administration of Prison Service, the Warsaw Regional Inspectorate of Prison Service, the Office of the Committee for European Integration and the CPT

(α) Whether the interference was "in accordance with the law"

235. Pursuant to Article 102 (11) read in conjunction with Article 214 § 1 of the Code of Execution of Criminal Sentences, a detainee has the right to conduct uncensored correspondence with the investigating authorities (e.g. the police and the prosecution), courts, other State or self-government authorities and the Ombudsman. Under Article 103 read in conjunction with Article 214 § 1 of that Code, a detainee's correspondence with institutions set up by international treaties ratified by Poland concerning the protection of human rights shall not be censored (see *Kliza*, cited in paragraph 104 above, §§ 30-32; and *Kwiek v. Poland*, no. 51895/99, 30 May 2006, §§ 23-24).

(β) The Court's conclusion

236. Since in respect of the above letters the authorities acted against the explicit legal prohibition, their interference was not "in accordance with the law" and therefore in breach of Article 8. Consequently, it is not necessary to examine whether the other requirements of that provision were complied with.

(iii) Letter from the applicant's defence counsel

(α) Whether the interference was "in accordance with the law"

237. Pursuant to Article 217a § 1 of the Code of Execution of Criminal Sentences, a detainee's correspondence shall be stopped, censored or monitored by the authority at whose disposal he remains unless that authority decides otherwise (see also *Kliza*, cited above, § 32). The impugned interference was, therefore, "in accordance with the law" within the meaning of Article 8.

(β) Whether the interference pursued a "legitimate aim" and was "necessary in a democratic society"

238. Since the Government did not advance any arguments, the Court assumes that, having regard to the fact that the censorship of the applicant's correspondence was linked to the criminal proceedings against him and was carried out throughout his detention, the interference with his correspondence with his defence counsel could arguably be regarded as being justified by "the prevention of disorder or crime".

239. However, the Court would recall that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion. For that reason the lawyer-client relationship is, in principle, privileged. The Court has many times stressed the importance of a prisoner's right to communicate with counsel out of earshot of the prison authority. By analogy, the same applies to the authorities involved in the proceedings against him. Indeed, if a lawyer were unable to confer with his client without such surveillance and receive confidential instructions from him, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective. It is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client if their correspondence is susceptible to routine scrutiny by individuals or authorities who may have a direct interest in the subject matter contained therein.

The reading of a prisoner's mail to and from a lawyer should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication was being abused (see *Campbell*, cited above, §§ 46-48, with further references).

240. In the present case the Court sees no evidence and therefore no reason to believe that the authorities acted on the basis of any suspicion, let alone any material proof, that the contents of the letter from the applicant's counsel were abusive, constituted a danger to prison security or that the envelope contained any illicit material. Nor does there appear to have been any other exceptional circumstances justifying the interference with the privileged correspondence. It follows that the censorship of that letter cannot be considered as "necessary in a democratic society". Accordingly, there has been a violation of Article 8 of the Convention on that account.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE IMPOSITION OF THE "DANGEROUS DETAINEE" REGIME

241. In respect of the imposition of the "dangerous detainee" regime on him, the applicant also alleged that, irrespective of the fact that it constituted treatment contrary to Article 3 of the Convention, it also amounted to a violation of his right to private life protected by Article 8 of the Convention.

Article 8, in its relevant part reads as follows:

> "1. Everyone has the right to respect for his private ... life.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

242. The Court notes that this complaint is linked to the complaint under Article 3 examined above (see paragraphs 137 and 178 above) and must therefore likewise be declared admissible.

B. Merits

243. The applicant submitted that the imposition of the "N" regime on him violated his right to private life, in particular on account of intrusive, constant surveillance of his cell, including sanitary facilities, and grossly humiliating strip-searches, which had been performed on him several times a day without any plausible security considerations.

244. The Government maintained that the application of the special regime had been necessary for the protection of prison security and had, therefore, served the legitimate aim of "prevention of disorder or crime"

under Article 8 § 2 of the Convention. They asked the Court to find no violation of Article 8 of the Convention.

245. The Court observes that the prolonged imposition of the "dangerous detainee" regime on the applicant lies at the heart of his complaint under Article 3 of the Convention. These issues have been examined and resulted in the finding of a violation of that provision (see paragraph 178 above). In the circumstances, the Court considers that no separate issue arises under Article 8 of the Convention and makes no separate finding.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

246. 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

247. The applicant stated that he limited his just satisfaction claims to non-pecuniary damage for the violation of Article 3 on account of the imposition of the "dangerous detainee" regime and for the violation of Article 8 on account of the restrictions on contact with his son and common-law wife during his detention. He sought 10,000 euros (EUR) for each violation.

248. The Government considered that the sums claimed were exorbitant and inconsistent with the Court's awards in similar cases.

249. The Court, having regard to its case-law and making its assessment on an equitable basis, awards the applicant EUR 18,000 in respect of non-pecuniary damage. It rejects the remainder of the claim.

B. Costs and expenses

250. Since the applicant did not ask for the reimbursement of costs and expenses incurred before the domestic courts or in the proceedings before the Court, there is no reason to make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 8 concerning the imposition of the "dangerous detainee" regime on the applicant; under Article 5 § 3 concerning the length of the applicant's pre-trial detention; under Article 5 § 4 concerning the lack of equality of arms; under Article 8 concerning the restrictions on the applicant's contact with his family during his detention; under Article 8 concerning the censorship of correspondence admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 8 of the Convention on account of the restrictions on the applicant's contact with his family during his detention;

6. *Holds* that there is no separate issue under Article 8 of the Convention in respect of the imposition of the "dangerous detainee" regime on the applicant;

7. *Holds* that there has been a violation of Article 8 of the Convention on account of the censorship of the applicant's correspondence;

8. *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 18,000 (eighteen thousand euros), to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President