

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

FOURTH SECTION

DECISION

Application no. 26945/07
Dariusz OSTROWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 1 September 2015 as a Chamber composed of:

Guido Raimondi, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Yonko Grozev, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 8 June 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant was born in 1972. He is currently serving a prison sentence in Świnoujście Remand Centre.

A. The circumstances of the case

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

1. The applicant's medical condition and successive periods of detention

3. In 2005 the applicant suffered an acoustic shock. He was subsequently diagnosed as having a severe hearing impairment. An audiometric test carried out on 20 July 2005 confirmed 10 decibels hearing loss (dB HL) in his left ear and 80 dB HL in his right ear. Medical treatment he underwent in the Szczecin Military Hospital from 10 to 19 August 2005 did not result in an improvement of his condition. He was released from the hospital and further outpatient treatment was recommended.

4. Subsequent laryngological and surgical treatment and further consultations with a psychiatrist, neurologist and optician resulted in successive decisions to postpone the start of a seven-year prison sentence imposed on him by the Świnoujście District Court on 15 May 2003. On 15 September 2005 the court postponed the start of his sentence until 15 March 2006 on health grounds (ref. no. VI Ko 199/05). Having regard to the applicant's medical records, it was of the view that serving the sentence would have been too harsh on him. On 25 May 2006 the court extended the period of postponement (ref. no. VI K 94/06), referring to the applicant's need to have further treatment.

5. He started his sentence on 10 July 2006.

6. The applicant was subsequently deprived of his liberty in a number of detention facilities, namely:

- Świnoujście Remand Centre (from 10 July to 24 October 2006, 27 February to 21 March 2007, 18 July to 17 August 2007, 9 to 19 February 2010 and 18 November 2010 to 10 June 2011);
- Szczecin Remand Centre (from 24 October to 6 December 2006 and 17 January to 1 February 2007);
- Bydgoszcz Remand Centre (from 6 to 28 December 2006);
- Koronowo Prison (from 28 December 2006 to 17 January 2007);
- Goleniów Prison (from 1 to 27 February 2007, 27 March to 18 July 2007, 17 August to 4 September 2008, 3 November 2008 to 5 February 2009 and 19 February to 18 November 2010);
- Katowice Remand Centre (from 5 to 17 September 2008);
- Nowy Wiśnicz Prison (from 17 September 2008 to 28 October 2008);
- Łódź Remand Centre (from 29 October to 3 November 2008);
- Nowogard Prison (from 10 June to 10 November 2011).

7. The applicant was examined by doctors of various prisons – twice in 2006, on four occasions in 2007 and on nine occasions in 2008. The courts twice postponed the date on which he was to start serving his prison sentence.

2. The applicant's efforts to obtain a hearing aid and applications for prison leave

8. On 31 August 2005 the applicant was provided with a medical prescription (*zlecenie lekarskie*) for a hearing aid for his right ear. Subsequently, on unspecified dates the competent court twice postponed the start of his prison sentence (see paragraph 7 above). While at liberty, he did not use a hearing aid and did not take any steps to obtain one.

9. On 22 June 2006 the applicant underwent another audiometric test, which gave similar results to the test on 20 July 2005 (see paragraph 6 above). At that time he had 75 dB hearing loss in his right ear. A subsequent medical certificate drawn up on 13 December 2006 demonstrated that his hearing had become worse, increasing to 80 dB hearing loss in his right ear and 30 dB hearing loss in his left ear.

10. On 31 March 2007 a laryngologist examined the applicant. He was informed that under Article 115 § 2 of the Code of Execution of Criminal Sentences, he could obtain a hearing aid at his own expense. Subsequently, he took steps to obtain a hearing aid without the help of the prison service. It appears that to that end he contacted the Institute of Physiology and Hearing Pathology (*Instytut Fizjologii i Patologii Słuchu*) in Warsaw and had a medical appointment scheduled for 13 August 2007; however, he could not attend it as he was imprisoned at the time.

11. On 30 May 2007 he was registered for social insurance purposes as a person suffering from a moderate disability (*umiarkowany stopień niepelnosprawności*).

12. On 5 July 2007 the applicant requested the Penal Division of the Szczecin Regional Court (hereinafter "the penal court") to grant him short-term prison leave to attend the medical appointment scheduled for 13 August 2007 (see paragraph 13 above) and further medical check-ups at liberty. He did not make a formal request to attend the relevant hearing. He requested that a lawyer be appointed under the legal aid scheme to represent him before the court. He submitted that he did not feel mentally fit to argue his own case and that he had been undergoing psychiatric treatment for years.

13. On an unspecified date in August 2007 the court dismissed his request for legal aid.

14. On 16 November 2007 the Szczecin Regional Court informed the applicant that his application for prison leave would be examined at a hearing scheduled for 20 November 2007.

15. The hearing was held as planned, without him being present. The court dismissed his request for leave. It considered, with reference to the medical certificate, that his hearing impairment could be treated in prison, that his detention had not put his life directly at risk within the meaning of Article 150 § 2 of the Code of Execution of Criminal Sentences, and that the legal requirements for granting him leave had not been met.

16. The applicant appealed, submitting that he had been deprived of the right to argue his case before the court either in person or through a legal aid lawyer. He requested to be present at the appeal hearing.

17. On 17 January 2008 he was informed that an appeal hearing had been scheduled for 31 January 2008. On that date the Szczecin Court of Appeal dismissed his appeal. He was not present at the hearing.

18. In its decision, the penal court referred to a medical certificate issued by a prison doctor on 7 August 2007. The court was of the view that, in the light of that certificate, the applicant's condition could be successfully accommodated by the prison health care system. The court did not address the issue of the procedural shortcomings which had allegedly been committed by the Regional Court.

19. The applicant applied to the Polish Association of the Deaf to be provided with a hearing aid. The replacement hearing aid (*zastępczy aparat słuchowy*) was issued to him on 8 April 2008. He was entitled to use it until he was able to buy his own device, with the possibility of a partial refund by the National Health Fund.

20. The applicant secured a new date for a specialist medical consultation at the Institute of Physiology and Hearing Pathology on 7 April 2008, but he could not attend.

21. On 8 July 2008 the Szczecin Regional Court dismissed another request for prison leave on medical grounds. The court relied on the same reasoning and on the same 2007 medical certificate as in its January 2008 decision (see paragraph 21 above). The applicant appealed.

22. On 30 September 2008 the Szczecin Court of Appeal quashed the decision. On 8 October 2008 the applicant was granted legal aid for the purposes of his request for leave. Meanwhile, he was transferred to another prison in a different court circuit. Eventually, on 3 February 2009 the Szczecin Regional Court granted him six months' leave to allow him to obtain a hearing aid. He left prison on 5 February 2009.

23. During his leave, he asked the State Fund for the Rehabilitation of Disabled Persons (*Państwowy Fundusz Rehabilitacji Osób Niepelnosprawnych*) and other organisations to finance the purchase of his hearing aid.

24. On 8 May 2009 the applicant was presented with an invoice from a private company that made hearing devices. The cost of a hearing aid fitted to his purposes was 1,888 Polish zlotys (PLN) (approximately 500 euros (EUR)). He did not collect the hearing aid from the shop during his prison leave, because he could not afford to pay for it.

25. By a letter dated 12 May 2009 the Świnoujście Family Assistance Centre (*Miejski Ośrodek Pomocy Rodzinie*) informed him that they could not finance his hearing aid.

26. On 25 August 2009 the Szczecin Regional Court extended his leave for another six months until 5 February 2010 (ref. no. V Kow 1521/09), as

he had not managed to obtain a hearing aid within the period of leave previously granted to him. Subsequently, he obtained a left ear hearing aid. The total price of the aid with an ear insert was PLN 2,498 (approximately EUR 630). PLN 610 (approximately EUR 154) was refunded by the National Health Fund, while PLN 900 (approximately EUR 227) was refunded by the State Fund for the Rehabilitation of Disabled Persons. He paid approximately PLN 1,000 (approximately EUR 252) from his own means.

27. The applicant failed to report back to Goleniów Prison at the end of his leave. He was arrested by the police and taken back there on 9 February 2010.

28. Once back in prison, he asked the prison authorities to provide him with a right ear hearing aid. They refused, referring to the principle that only people in employment were entitled to two hearing aids, including persons at liberty.

29. On 15 December 2010 a laryngologist issued an opinion that he should also be provided with a right ear hearing aid.

30. Subsequently, on 14 January 2011 the applicant applied to the Szczecin Regional Court for further prison leave (ref. no. V Kow 139/11). He raised the issue of his hearing impairment. He submitted that he planned to undergo ear surgery and urological surgery. He was granted legal aid for the purposes of the proceedings. On 10 March 2011 the Szczecin Regional Court assigned a lawyer to represent him under the legal aid scheme.

31. On 5 April 2011 the Szczecin Regional Court refused his request for prison leave. The court referred to a medical certificate dated 1 March 2011, which indicated that he had been examined by laryngologists on several occasions, that he was suffering from hearing problems but had been using a hearing aid, that the certificate of 5 December 2010 had not recommended that it was absolutely necessary for him to also have a hearing aid for his right ear, and, lastly, that during the previous period of leave, he had committed another criminal offence and had not returned to prison on the due date.

The applicant was represented by the legal aid lawyer.

32. The applicant appealed and requested to be taken from prison to the appeal hearing. On 9 June 2011 the Szczecin Court of Appeal refused to allow his request. It was of the view that he had failed to refer to any circumstances that would justify his attendance in person, that the decision was to be taken on the basis of documents in his medical file, and that he was represented by a legal aid lawyer.

On the same date the court dismissed his appeal. It noted that it was not in dispute that he suffered from various ailments which necessitated medical care, but it was possible to provide treatment to him in prison. The court referred to a medical certificate and his laryngological consultations, none

of which confirmed that he was in danger of becoming deaf. There was no need for him to be provided with a right ear hearing aid.

33. On 5 May 2011 the applicant was consulted by a laryngologist. The doctor was of the view that his very significant hearing loss made the use of a hearing aid for his right ear pointless. Furthermore, it was possible that the right ear hearing aid would interfere with the left ear hearing aid he had been using. The laryngologist did not recommend that he be provided with a hearing aid for his right ear.

34. As the laryngologists' opinions dated 15 December 2010 and 5 May 2011 were contradictory, another consultation was arranged on 29 August 2011 at the laryngological ward of the Pomeranian Medical University in Szczecin. Medication was prescribed as a result of this consultation. The conclusions of the opinion of 15 December 2010 as to the necessity of the applicant being fitted with a hearing aid for his right ear were confirmed.

35. On 30 August 2011 the applicant made another request to have a hearing aid provided by the penal authorities. The following day, after considering this oral request, the authorities decided to wait for the court's decision as to the applicant's possible prison leave.

36. On 8 November 2011 the Szczecin Regional Court granted six months' prison leave to the applicant (ref. no. V Kow 2435/11 pr). He submitted, in support of his request, that because of his disability he had found it difficult to communicate with his fellow inmates and the prison guards, which had resulted in people being aggressive and intolerant towards him. He had been insulted and humiliated. Moreover, he could not attend the education classes offered in prison or fully engage in religious practices.

The court noted that the applicant was serving a six-year prison sentence. He suffered progressive hearing loss, atrophy of the hearing nerves, myopia, and hyperglyceridemia. He was afraid of losing his hearing and wanted to be treated. He had used a hearing aid since 2008, but his hearing had deteriorated. His hearing loss had caused him to have anxiety attacks and depressive thoughts. A detailed diagnosis of his hearing problems and surgical treatment, if necessary, was not possible within the confines of a prison.

37. On 10 November 2011 the applicant was provided with a right ear hearing aid paid for by the detention facility.

38. On 20 December 2012 a doctor working for the social insurance authorities declared the applicant partially unfit to work for the period ending 31 December 2013.

39. On 26 February 2013 the penal court granted the applicant further leave for the purposes of his medical treatment.

40. On 22 March 2013 he had an ear implant fitted during an operation in a civil hospital in Kajetany specialising in treating hearing disorders. In June 2013 the hospital scheduled twelve visits at three-month intervals, with

the treatment ending on 20 March 2015, with a view to him having a clinical follow-up after each operation. On 26 September 2013 he attended a follow-up appointment at that hospital.

41. On 8 November 2013 he returned to prison to serve the remainder of his sentence. He submitted that the prison administration had not allowed him to attend a follow-up appointment scheduled for 27 November 2013.

3. Criminal investigation against the prison staff and administration

42. The applicant tried to institute criminal proceedings against the prison staff, alleging that they had failed to provide him with appropriate medical care.

43. On 14 August 2008 the Goleniów District Court dismissed an interlocutory appeal by the applicant against a decision by the Goleniów District Prosecutor on 30 June 2008 (Ds. 505/08) refusing to open an inquiry into his allegations that the Goleniów Prison doctor had put him directly at risk of severe health damage by refusing to authorise his diagnostic hearing tests and by failing to provide him with a hearing aid.

44. The prosecution authorities had found that the applicant had undergone medical tests in 2006. Since then, he had been under continuous medical care in prison. He was not considered to be at risk of suffering any damage to his health. It was also noted that the State was under an obligation to provide prisoners with only basic health care, and not to grant their (often excessive) wishes to receive specialist medical services and undergo unnecessary medical procedures.

45. On 10 March 2008 the Świnoujście District Court dismissed an appeal by the applicant against a decision taken by the District Prosecutor on 9 June 2007 (Ds. 656/07) discontinuing an investigation against the staff of the Świnoujście Remand Centre who had allegedly put his life at risk by interrupting the medical treatment prescribed to him by the remand centre psychiatrist. It was established that the applicant's psychiatric treatment had been temporarily interrupted because he had been moved to a smaller remand centre where, for reasons unspecified in the decision, his treatment could not be continued. However, this did not amount to a criminal offence. It was further held that a hearing aid was not absolutely necessary for the applicant. His hearing impairment made his detention more difficult, but it did not render it impossible or too harsh on him.

4. The applicant's complaints to the penal authorities

46. By a letter dated 17 August 2007 the Szczecin Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) informed the applicant that complaints he had lodged on 27 July and 3 August 2008 concerning the administration of his medication, adequacy of his medical care and failure to provide him with a hearing aid had been declared

ill-founded. It was established that (in the morning) a prison nurse and (in the evening) a prison guard administered psychotropic drugs to the applicant on prescription. He had received three injections, whereas the fourth injection, which he had asked for, was not required. The prison laryngologist had not considered it necessary for him to use a hearing aid. Accordingly, he had been informed that the device would not be financed by the prison health care system.

47. By a letter dated 30 June 2008 the governor of Goleniów Prison informed the applicant that his complaint regarding the alleged irregularities in the administration of his medication had been considered ill-founded, as he had received it in a manner consistent with his prescription.

5. The applicant's civil action against Goleniów Prison – State Treasury

48. After lodging his application with the Court, on 14 July 1008 the applicant instituted a civil action against the State Treasury representing Goleniów Prison (ref. no. I C 757/08). Originally, his allegations concerned power cuts in the detention facility, being forced to take sleeping pills at 6.30 p.m., the supposed presence of asbestos in the prison buildings, limited possibilities of employment, overcrowding and the lack of common space. During a hearing on 30 November 2011 the applicant stated that he was also claiming compensation for health damage he had sustained as a result of his irreversible hearing loss as well as the overall poor prison conditions.

49. The applicant's claim concerned the period 1 February 2007 to 5 February 2009.

50. On 29 October 2009 an expert opinion prepared by a laryngologist was submitted to the court. The doctor stated that there was no doubt as to the applicant's very significant hearing loss in his right ear, whereas an evaluation of the hearing loss in his left ear was more difficult and had not led to unequivocal results. The expert had regard to audiograms made on 13 December 2006, 16 July 2008, 29 August 2008, 8 December 2008, 12 February 2009 and 19 October 2009 and to a number of documents in the applicant's medical records. There were discrepancies between results of different audiograms, as the applicant had over that time been examined by various people and with various apparatus. The applicant's emotional state could also have had an impact on the results. Some results indicated a deterioration of his hearing, whereas other suggested an improvement from 2006 to 2009. It was noted that the applicant had been using a hearing aid since 4 April 2008.

The expert found that the applicant's hearing without a hearing aid was "socially efficient" (*wydolne społecznie*), while with the aid it was good. He found that there were no grounds on which to establish that the applicant's hearing had deteriorated as a consequence of his detention. He emphasised that usage of a hearing aid had no influence on the possibility of further

deterioration as it neither cured nor prevented hearing loss; it only made the applicant's social functioning more comfortable.

51. On 22 September 2010 the expert was questioned by the court, and upheld his conclusions.

52. On 29 December 2010 the Szczecin Regional Court was provided with an expert opinion by a psychiatrist concerning the applicant's mental health. It was stated that it was not possible to carry out a full assessment without access to his medical records stored in the hospitals where he had been treated previously or without prior psychological tests. The applicant apparently suffered from various personality problems.

53. During the hearing on 30 November 2011 (see paragraph 51 above) the psychiatrist was questioned.

54. On 14 March 2012 the Szczecin Regional Court dismissed the applicant's compensation claim, finding that there was no evidence to show that he had been attacked or ill-treated because of his bad hearing; that the medical reports had certified that he could have some difficulties following conversations held in a noisy room between a number of people; that his hearing was socially efficient; that there was no evidence to show that it had deteriorated during and because of his detention; that a hearing aid could assist him in everyday life but could not be regarded as treatment of his condition; and that the refusals to provide him with a hearing aid at the public's expense did not result in the deterioration of his hearing, nor could be seen as humiliating or debasing treatment.

The court had regard to the applicant's medical records, his correspondence with the Association of the Deaf, certain documents in the applicant's prison records, the laryngologist's opinion referred to above, and the testimony given by the prison laryngologist, E.P., the psychologist, the psychiatrist, the laryngologists and three other witnesses.

The applicant appealed.

55. On 29 June 2012 the Szczecin Court of Appeal dismissed his appeal, fully sharing the findings and conclusions of the first-instance court.

B. Relevant domestic law

56. The provisions pertaining to medical care in detention facilities, and the relevant domestic law and practice are set out in the Court's judgments in the cases of *Sławomir Musial v. Poland* (no. 28300/06, §§ 48-61, 20 January 2009), and *Kaprykowski v. Poland* (no. 23052/05, §§ 36-39, 3 February 2009). In particular, Article 115 of the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) ("the Code") provides:

"1. A sentenced person shall receive medical care, medication and sanitary items free of charge.

...

4. Medical care is provided, primarily, by health care establishments for persons serving prison sentences.

5. Health care establishments outside the prison system shall cooperate with the prison medical services in providing medical care to sentenced persons if necessary, in particular:

1) to provide immediate medical care because of a risk to the life or health of a sentenced person;

2) to provide specialist medical examinations, treatment or rehabilitation to a sentenced person;

3) to provide medical services to a sentenced person who has been granted prison leave or a temporary break in ... the sentence ..."

57. On the basis of Article 115 § 10 of the Code, the Minister of Justice issued the Ordinance of 31 October 2003 on the detailed rules, scope and procedure relating to the provision of medical services to persons in confinement by health care establishments for persons deprived of liberty *(Rozporządzenie Ministra Sprawiedliwości w sprawie szczegółowych zasad, zakresu i trybu udzielania świadczeń zdrowotnych osobom pozbawionym wolności przez zakłady opieki zdrowotnej dla osób pozbawionych wolności).* The Ordinance was in force from 17 December 2003 until 11 July 2010.

58. Health care establishments for persons deprived of their liberty provided, inter alia, medical examinations, treatment, preventive medical care, rehabilitation and nursing services (paragraph 1.1).

59. A person deprived of his or her liberty was subjected to preliminary and periodical medical examinations and check-ups (paragraph 2), and had to undergo preliminary medical examinations, such as a review of his or her medical history and a physical examination as soon as he or she was admitted to a detention establishment (paragraph 3). Moreover, no later than fourteen days from the admission date, a person deprived of his or her liberty had to have a chest X-ray and a dental examination.

60. Prison doctors were authorised to prescribe medical tests other than those mentioned above, if it was justified in the light of the health of the person deprived of his or her liberty (paragraph 3.5). Those tests, however, were not mandatory and could only be performed with a prisoner's consent.

61. The Ordinance of 31 October 2003 was replaced by a largely similar text, the Ordinance of 23 December 2010, on the provision of medical services to persons in confinement by health care establishments for persons deprived of liberty *(Rozporządzenie Ministra Sprawiedliwości z dnia 23 grudnia 2010 r. w sprawie udzielania świadczeń zdrowotnych osobom pozbawionym wolności przez zakłady opieki zdrowotnej dla osób pozbawionych wolności)*, which entered into force on 3 January 2011.

COMPLAINTS

62. The applicant complained that his detention amounted to inhuman and degrading treatment, in breach of Article 3, on account of the fact that no adequate measures had been taken by the authorities with a view to accommodating his impaired hearing.

THE LAW

A. Article 3 of the Convention

63. The applicant complained that his detention amounted to inhuman and degrading treatment as no adequate measures had been taken to accommodate his impaired hearing. Article 3 reads as follows:

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

64. The Government argued that the applicant had not exhausted the domestic remedies available to him. He should have brought a civil action seeking compensation for the infringement of his personal rights, namely his dignity and health, under Articles 23 and 24 of the Civil Code, read in conjunction with Article 448 of that Code. This remedy was of a compensatory nature and might have offered financial redress for his suffering. Consequently, the Government invited the Court to reject this part of the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention. The Government did not refer to any examples of judicial practice in this connection.

65. The Government further argued that, when they submitted their observations in the present case, the civil proceedings were pending before the Szczecin Regional Court. It was primarily the role of the domestic court to adjudicate the case and rule on the applicant's compensation claim. The Government stated that they would therefore prefer to refrain from taking a position on the merits of the case, as it would have been premature.

66. The Government further submitted that in the initial phase of his detention, to reduce the negative effects of his disability on his mental health, the applicant had been prescribed psychotropic drugs and had been regularly examined by a prison psychiatrist. He had also been examined by a laryngologist. However, later, because of consecutive transfers to different penal facilities, his medical treatment and supervision had been interrupted for significant periods of time.

67. The Government argued that the medical expert reports had demonstrated that the applicant's hearing was "socially efficient" with regard to his left ear, and that he suffered from practical deafness in his right

ear. The use of a hearing aid could improve his hearing from only "socially efficient" to "good" with regard to his left ear, but it would never be "very good" or "excellent" again. The applicant had one hearing aid at his disposal since April 2008 and hearing aids for both ears since 2011. He had not demonstrated that his hearing had deteriorated as a result of his detention. Nor had he shown that he suffered from any mental disorder resulting from his hearing difficulties. The medical treatment made available to him had been an adequate response to his personality disorder. Overall, his detention conditions had been adequate, as he had been imprisoned in small cells and had obtained prison leave on several occasions.

68. The Government averred that in 2007 the number of doctors' consultations per capita in the Polish civilian health care system amounted to 6.5 consultations per person. In the penal health care system this rate amounted to 14.3 consultations per detainee. Hence, detained persons had access to specialists more than twice as often as other patients, who had to cope with long waiting lists, both with respect to access to specialists and to hospital admissions. The waiting times sometimes amounted to months and years.

69. The Government concluded that the application was premature and that, in any event, there had been no violation of Article 3 of the Convention on account of the allegedly insufficient medical care the applicant had been receiving.

70. The applicant averred that he had been refused adequate medical treatment during his detention. Despite the fact that he had informed the prison authorities of his hearing problems and about the deterioration of his hearing, the authorities had refused his requests for proper treatment and for leave on medical grounds. The applicant acknowledged that it was true that since April 2008 he had been using a replacement hearing aid; however, it was not appropriate for his condition. While his hearing had been classed as "socially efficient", this assessment referred only to good acoustic conditions. Any environmental interference resulted in a reduced response.

71. The applicant was of the view that the compensatory remedy relied on by the Government could by no means bring the result sought by him, namely the timely provision of adequate medical care and hearing aids.

72. The Court does not find it necessary to examine the Government's objection concerning the applicant's failure to exhaust domestic remedies, as the present complaint is in any event inadmissible for the reasons set out below.

73. The Court reiterates that 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 level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In

considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among many other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001–III; and *Engel v. Hungary*, no. 46857/06, § 26, 20 May 2010).

74. Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Sławomir Musiał*, cited above, § 86; and *Kaprykowski*, referred to above, § 69). There are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see, among many other authorities, *Mouisel v. France*, cited above, §§ 40-42, and *Rivière v. France*, no. 33834/03, § 63, 11 July 2006).

75. As to the applicant's condition, the Court notes that the applicant referred in general terms to feeling humiliated and debased as a result of his hearing problems. However, in so far as he intended to state that he was being humiliated or ill-treated by other detainees, such allegations have neither been supported by any evidence brought before the Court, nor even by reference to any actual incidents; nor has it been shown that they have ever been brought to the attention of the domestic authorities.

76. Likewise, there is no evidence of any incident or positive intention to humiliate or debase the applicant on the part of the State authorities. The Court holds, therefore, that even though a prisoner with special needs is more vulnerable to the hardships of detention in view of his or her health problems, the treatment of the applicant in the circumstances of the present case did not reach the threshold of severity required to constitute degrading treatment contrary to Article 3 of the Convention (see *Vladimir Vasilyev v. Russia*, § 55, no. 28370/05, 10 January 2012; *V.D. v. Romania*,

no. 7078/02, § 92, 16 February 2010 and *Slyusarev v. Russia*, no. 60333/00, § 43, 20 April 2010).

77. No *prima facie* evidence was submitted to the Court to support a conclusion that the applicant's condition was of such severity as to be as such incompatible with his detention. The Court further considers it relevant to also take note of the fact that his compensation claim was dismissed by the civil court, which found no evidence to show that he had been attacked or ill-treated by inmates because of his bad hearing. It observes that the medical reports had certified that he could have some difficulties following conversations held in a noisy room between a number of people; that his hearing was "socially efficient"; that there was no evidence to show that his hearing had deteriorated during his detention; that a hearing aid could assist him in everyday life but could not be regarded as treating his condition; and that the refusals to provide him with a hearing aid at the public's expense did not result in the deterioration of his hearing, nor could be seen as humiliating or debasing treatment.

78. As regards the adequacy of the medical assistance and care provided to the applicant, the Court observes that he started to serve his sentence on 10 July 2006. A hearing evaluation report prepared in June 2006, prior to his detention, confirmed that he had a hearing impairment. A subsequent report prepared in December 2006 demonstrated that his hearing had deteriorated. He was examined by various doctors – twice in 2006, on four occasions in 2007 and on nine occasions in 2008. A replacement hearing aid for one ear was issued to him by the Polish Association of the Deaf on 8 April 2008.

79. It is further noted that during his leave granted to him on 3 February 2009 (see paragraphs 22 above and 82 below) the applicant obtained a hearing aid for his left ear which was partly paid for with public funds. The applicant failed to report to prison at the end of his leave. Once he was taken back to the prison by the police in February 2010, he asked the prison authorities to provide him with a hearing aid for his right ear. In December 2010 a laryngologist expressed the view that the applicant should be provided with also with a right ear hearing aid. On 1 March 2011 a medical certificate for the purposes of the applicant's next request for prison leave certified that he had been examined by laryngologists on several occasions. He was examined again by a laryngologist on 5 May 2011. These opinions differed as to whether there was a need to also provide him with a hearing aid for his right ear. Another consultation was therefore arranged on 29 August 2011 at the Szczecin Medical University. On 8 November 2011 the court granted the applicant a further six months' prison leave, having regard to his hearing problems and the need to address them outside the prison. Before the applicant left prison, he was provided with a hearing aid paid for by the detention facility.

80. The applicant's attempts to institute criminal proceedings against the prison staff on suspicion of allegedly putting his life at risk were likewise unsuccessful essentially because the prosecution authorities observed that he had been under continuous medical care while in prison. Further, in its decision of 10 March 2008 the District Court held that a hearing aid was not absolutely necessary for the applicant. His hearing impairment made his detention more difficult, but it did not render it incompatible with his detention.

81. Similarly, the applicant's administrative complaints regarding the alleged failure to address his health problems were unsuccessful, as the authorities found that he was in fact under medical supervision and that laryngologists were of the view that it was not necessary for the applicant to have a hearing aid at the relevant time.

82. As to whether the domestic authorities pondered the advisability of maintaining the detention in view of the applicant's state of health, it is noted that that on 15 September 2005 and 25 May 2006 the Świnoujście District Court decided to postpone the start of his prison sentence, having regard to his health and the need for him to undergo appropriate medical treatment. The applicant has not shown to the Court's satisfaction that while at liberty, he took steps with a view to obtaining a hearing aid.

It is further noted that on 3 February 2009 the applicant was granted further prison leave for a period of six months with a view to obtaining a hearing aid tailored specifically to his purposes. His leave was subsequently extended for another six months, the court having regard to the fact that he had not managed to obtain a hearing aid.

Subsequently, on 8 November 2011 the court granted the applicant a further six-month prison leave, having regard to his hearing problems. The Court is therefore satisfied that the authorities repeatedly examined the compatibility of the applicant's condition with his maintained detention and on several occasions granted him leave on medical grounds.

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

B. Article 6 of the Convention

84. The applicant further complained that he had been deprived of his right to fair hearing in connection with the proceedings concerning the refusal of his request for prison leave submitted to the court on 5 July 2007. He alleged a violation of Article 6 § 1 of the Convention, the relevant parts of which provide:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... fair hearing ... by [a] ... tribunal ..."

85. The Government submitted that Article 6 was not applicable to the proceedings concerned, as they were part of proceedings concerning the execution of criminal sentences (or "penal proceedings"). Article 6 § 1 of the Convention under its criminal head was therefore not applicable, as they did not serve the purpose of determining a criminal charge against an individual.

86. The Government noted that the Court usually requires penal proceedings to be of a "pecuniary nature" in order for them to fall under the civil head of Article 6 § 1. In particular, this provision under its civil head applied to criminal proceedings involving a determination of pecuniary claims asserted by the injured parties, or if they had an impact of the applicant's own reputation or that of their deceased relatives (see *Brudnicka and Others* v. *Poland,* no. 54723/00, §§24-34, ECHR 2005-11; *Kurzac v. Poland* (dec), no. 31382/96, 25 May 2000) and, even in the absence of such claims, to those criminal proceedings the outcome of which is decisive for the "civil right" in question". The Convention did not confer any right to "private revenge" or to an *actio popularis*. Thus, the right to have third parties prosecuted or sentenced for a criminal offence could be asserted independently (see, among other authorities, *Perez v. France* [GC], no. 47287/99, §§ 65-67 and 71, ECHR 2004-I). The present case also had to be distinguished from the case of *Aerts v. Belgium* (30 July 1998, *Reports of Judgments and Decisions* 1998-V) where the applicant was detained for seven months in the psychiatric wing of an ordinary prison, rather than in a social protection centre designated by the relevant mental health authority. The Court considered that the *Aerts* case did not involve the "determination of a criminal charge", but held that Article 6 § 1 was applicable under its civil head as the applicant had sought compensation.

87. The Government concluded that Article 6 was not applicable to the proceedings held in November 2007 and January 2008 concerning the applicant's request for prison leave.

88. They further submitted that, in any event, the applicant had failed to make a formal request to be brought before the penal court prior to the hearing held on 20 November 2007.

89. The applicant did not submit his observations on this aspect of the case.

90. The Court notes that the proceedings for the applicant's release on probation did not involve the determination of his criminal charge, it having already been determined by his final conviction. The Court concludes therefore that the criminal limb of Article 6 § 1 does not come into play (see *Enea v. Italy* [GC], no. 74912/01, § 97). Furthermore, the Court has already determined that complaints regarding proceedings seeking early release from prison, such as those conducted in the present case under the provisions of the Polish Code of Execution of Criminal Sentences, were incompatible *ratione materiae* with the provisions of the Convention within

the meaning of Article 35 § 3 (a) (see *Boulois v. Luxembourg* [GC], no. 37575/04, § 82-105, ECHR 2012; and *Pawlak v. Poland* (dec.), no. 73620/10, 2 April 2013).

91. The Court does not deem it necessary to ascertain whether the proceedings concerning a request to be granted prison leave instituted by the applicant concerned a "dispute" over a "right" within the meaning of Article 6 § 1, or whether this alleged right was "civil" in nature, for the following reasons (see, for the same approach in the context of proceedings for release on probation, *Bogusław Krawczak v. Poland*, no. 24205/06, § 96-100, 31 May 2011, and *Karabin v. Poland*, § 52-55, no. 29254/06, 7 January 2014).

92. The Court notes, firstly, that he has not shown that he submitted a request to be brought before the penal court for the hearing held on 20 November 2007. It is further noted that he had his request for leave examined by domestic courts at two levels of jurisdiction. The courts dismissed his request referring to the relevant medical certificates. The impugned decisions do not disclose any appearance of arbitrariness or unfairness on their part (see paragraphs 15 and 18 above). The crucial issue to be determined was whether the applicant's condition was so bad at that time that it was impossible to have it treated by the prison health services. The courts had his medical records before them, and made their decision with reference to the medical certificates drawn up by the doctors.

93. Having regard to the above circumstances, the Court concludes that the applicant was not deprived of his "right to a fair ... hearing" required by Article 6 § 1 of the Convention.

94. It follows that the complaint regarding the unfairness of the proceedings for prison leave is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Other alleged violations of the Convention

95. Lastly, the applicant complained under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention that the State authorities had failed to manage his apartment during his detention and did not do anything to prevent him becoming increasingly in debt from overdue rent.

96. The applicant informed the Court that on the day of his arrest he had been transported to his apartment under police escort and had had the opportunity to secure it properly. The Court therefore cannot accept that any further obligations arose on the part of the State authorities in respect of the applicant's apartment under Article 8, Article 1 of Protocol No. 1 or any other Convention provision.

97. In any event, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court

finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 September 2015.

Fatoş Aracı
Deputy Registrar

Guido Raimondi
President