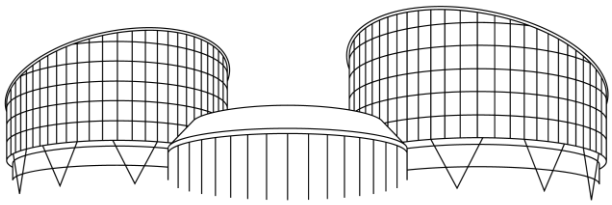

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GŁOWACKI v. POLAND

(Application no. 1608/08)

JUDGMENT

STRASBOURG

30 October 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Głowacki 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 9 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 1608/08) 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 Leszek Robert Głowacki ("the applicant"), on 27 December 2007.

2. The applicant was represented by Mr P. Florek, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their then 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 "dangerous detainee" regime on him. He further complained about the length of criminal proceedings against him.

4. On 17 November 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Warsaw.

A. First set of criminal proceedings.

6. On an unknown date in 1991 the applicant was charged with aggravated robbery. In 1993 the Siedlce Regional Prosecutor (*Prokurator Wojewódzki*) stayed the investigation as the applicant's whereabouts were not known. In July 1993 the applicant was arrested and began serving a prison sentence which had been imposed in 1982.

7. On 14 March 1994 a bill of indictment was lodged with the Warsaw Regional Court (*Sad Wojewódzki*). The applicant was charged with robbery.

8. The proceedings were stayed on 6 March 1996 in view of the applicant's health. In December 1996 he underwent spinal surgery. The trial was resumed on 28 September 1997.

9. The applicant failed to appear at some hearings in 2003, however the trial court found that this was because he had been serving a prison sentence imposed in another set of criminal proceedings.

10. On 5 April 2004 the charges against the applicant and several co-accused were severed and dealt with in a separate set of proceedings.

11. The applicant failed to appear at a hearing held on 30 June 2005. On the same date the Warsaw Regional Court (*Sad Okręgowy*) issued a wanted notice in respect of the applicant and ordered that he be arrested and remanded in custody.

12. On 18 July 2005 the court severed the charges against the applicant, to be dealt with in a separate set of the proceedings, and on the same date stayed the proceedings as the applicant was in hiding.

13. The applicant was arrested on 18 May 2007. He was placed in the Warsaw Białołęka Detention Centre on 21 May 2007.

14. On 11 June 2007 the Warsaw Regional Court resumed the proceedings against the applicant.

15. In the course of the proceedings, the applicant's detention was extended on 13 August and 17 December 2007 and 26 March, 21 April, 21 July and 26 September 2008. In their decisions on the matter the authorities relied on the original grounds given for holding him in custody. The applicant did not appeal against most of the decisions extending his detention.

16. On 22 September 2009 the Warsaw Regional Court convicted the applicant of armed robbery, burglary and causing serious bodily harm and sentenced him to five years' imprisonment.

17. The applicant's detention was subsequently extended, in particular on: 26 September and 22 December 2008 and 6 March 2010. The applicant lodged an appeal against the last of those decisions.

18. On 10 April 2010, at the applicant's request, the detention was lifted and he was released from custody.

19. On 2 March 2011 the applicant began serving the prison sentence imposed on 22 September 2009.

B. The second set of criminal proceedings

20. On an unknown date in 2007 the Płock Regional Prosecutor (*Prokurator Okregowy*) instituted criminal proceedings against the applicant and several co-accused on charges of illegal possession of weapons and robbery.

21. On 23 May 2007 the Ostrołeka District Court remanded the applicant in custody, relying on the suspicion that he had committed the offences with which he was charged. It attached importance to the likelihood of a lengthy prison sentence being imposed on the applicant, the serious nature of the offences of which he was suspected, and the risk that he would go into hiding. This was made more likely by the facts that he did not have a permanent place of residence and was unemployed. The applicant did not appeal against this decision.

22. In the course of the investigation the applicant's detention was extended on 31 July and 15 November 2007 and on 31 January, 18 April and 3 October 2008. The authorities relied on the original grounds given for keeping him in custody.

23. Appeals by the applicant against the decisions extending his detention and all his subsequent applications for release and appeals against refusals to release him were unsuccessful.

24. On 21 January 2008 a bill of indictment was lodged with the Płock Regional Court.

25. On 18 December 2008 the Płock Regional Court convicted the applicant as charged and sentenced him to seven years and six months' imprisonment. The applicant's detention was subsequently extended.

26. On 28 October 2009 the Warsaw Court of Appeal partly upheld the first-instance judgment and partly remitted it. It also sentenced the applicant to one year's imprisonment. The applicant served this sentence between 18 May 2007 and 18 May 2008.

27. On 8 December 2009 the Warsaw Court of Appeal lifted the applicant's remand in custody.

C. Proceedings under the 2004 Act

28. On 1 September 2009 the applicant lodged a complaint with the Warsaw Court of Appeal under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"). The applicant sought a ruling that the length of the proceedings before the Warsaw Regional Court (see paragraphs 6-19 above) had been excessive, and also sought an award of just satisfaction.

29. On 15 December 2009 the Court of Appeal gave a decision and dismissed the applicant's complaint. The court considered that there had been no significant delays in the proceedings, as the applicant had contributed to the length of the proceedings.

D. Imposition of the "dangerous detainee" regime

1. Undisputed facts

30. On 21 May 2007 the applicant was placed in the Warsaw Białołęka Remand Centre (*Areszt Śledczy*).

31. On 1 June 2007 the Penitentiary Commission of the Warsaw Białołęka Remand Centre classified him as a "dangerous detainee" (*tymczasowo aresztowany niebezpieczny*) and ordered that he be placed in a closed cell. The commission referred to: the fact that the applicant was accused of armed robbery and using fake police uniforms, and that he had previously escaped from the Warsaw Mokotów Remand Centre, and also to his "serious lack of moral character" and long history of criminal convictions.

32. Every three months the Warsaw Remand Centre Penitentiary Commission reviewed and upheld its decision classifying the applicant as a "dangerous detainee". In particular on 26 February 2008 the commission confirmed its previous decision. It considered that it was necessary to place the applicant in solitary confinement as he had been charged with numerous offences, including armed robbery. The commission also referred to "serious lack of moral character".

33. The applicant appealed to the penitentiary courts against most of those decisions, arguing that he was suffering from various health problems including hemiparesis and discopathy, and should not be placed in solitary confinement. He also stressed that he had never been charged with acting as part of an organised criminal group.

34. All his appeals were dismissed. The courts gave decisions on 26 May, 29 August and 17 October 2008, 15 April and 24 June 2009, and 4 March 2010. The authorities relied on the grounds given for the initial decision. In particular they stressed the risk posed by the seriousness of the offences and the use of weapons and fake police uniforms.

35. On 30 May 2008 the applicant was transferred to Płock Prison so that he could attend the proceedings before the Płock Regional Court (see paragraphs 20-27 above). He was placed alone in a cell for dangerous detainees. This situation applied between 30 May and 4 September 2008 and 9 September and 11 December 2008. The applicant complained about this on several occasions, alleging that due to his health problems, for safety reasons he should have been placed with another inmate.

36. Due to his "dangerous detainee" status the applicant was under increased supervision. The applicant's cell in Płock Prison measured 6.92 sq. m. Between 11 December 2008 and 9 January 2009 he shared it with another inmate. Every time the applicant left or entered his cell he was subjected to a body search, which in practice meant that he had to strip naked. Examinations of the applicant's body, his clothing and shoes were conducted in a separate room, with no third parties present.

37. The applicant was ordered to wear "joined shackles" (*kajdanki zespolone*) on his hands and feet on three occasions during the proceedings before the Płock Regional Court, on 2, 9 and 11 June 2008. Those shackles consisted of handcuffs and fetters joined together with chains. On each occasion he was put in the shackles on his arrival at the court and remained handcuffed throughout the day until the end of the hearing.

38. The applicant was allowed to receive visits from his family. According to a list of visits provided by the Government, between 8 July and 28 October 2008 the applicant was visited on four occasions by his sister and son (one visit per month). Subsequently, between 29 June 2009 and 2 November 2009 his sister and son visited him on average once a month. The majority of these visits lasted one hour. Between 28 October 2008 and 4 June 2009 he was not visited by anyone.

39. On 8 May 2009 the applicant was granted leave to attend his mother's funeral.

2. Facts in dispute

40. The Government submitted that after his initial complaint the applicant had, in direct conversation with the prison authorities, agreed to be held in solitary confinement.

41. The applicant argued that when his complaints were unsuccessful he had had no other choice than to accept the situation which had been imposed on him.

E. Conditions of detention

1. Undisputed facts

42. The applicant was detained in the following detention centres: Warsaw Białołeka Detention Centre, Lublin Remand Centre, Warsaw Mokotów Remand Centre, and Płock Prison.

43. He failed to lodge a claim for compensation for damage to his health sustained as a result of inadequate conditions of detention.

2. Facts in dispute

44. The applicant argued that the living conditions in the detention centres in which he was detained were inadequate. The cells were very

small, with approximately 3 sq. m per person. The exercise area was also very small, approximately 15 sq. m.

45. The Government submitted that during the applicant's detention in all four of the penal establishments listed above all standards of detention were respected.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. "Dangerous detainee" status

46. The relevant domestic law and practice concerning the imposition of dangerous detainee status are set out in the Court's judgments in the cases of *Piechowicz v. Poland* (no. 20071/07, §§ 105-117, 17 April 2012), and *Horych v. Poland* (no 13621/08, §§44-56, 17 April 2012).

B. Preventive measures, including pre-trial detention

47. The relevant domestic law and practice concerning the imposition of detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "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).

C. Remedies against unreasonable length of proceedings

The relevant domestic law and practice concerning remedies for excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland*, no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and in its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

D. Claim for damages for infringement of personal rights

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

48. Article 23 of the Civil Code contains a non-exhaustive list of "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 appropriate sum for the benefit of a specific public interest."

49. 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 appropriate sum as pecuniary compensation for non-material damage (*krzywda*) to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of whether they are 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 ..."

50. 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

51. 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 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 after the date on which the claimant learned of the damage and the identity of the person responsible for it. However, this expiry date may not be later than ten years after the date on which the event causing the damage occurred."

III. INTERNATIONAL DOCUMENTS

52. The relevant international documents concerning the imposition of security measures and the 2009 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are set out in the Court's judgment in the case of *Piechowicz v. Poland* (cited above, §§ 127-136).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant complained under Article 3 of the Convention that the continued imposition of the "dangerous detainee" regime amounted to inhuman and degrading treatment and was in breach of this provision. He also complained in general of inadequate conditions of detention, alleging overcrowding of cells. Article 3 of the Convention states:

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

54. The Government contested that argument.

A. Admissibility

1. The parties' submissions

55. The Government argued that the applicant had failed to make use of the remedies of a compensatory nature governed by the provisions of Articles 23 and 24 of the Civil Code, in conjunction with Article 445 or Article 448 of the Civil Code, and had not brought an action for compensation for alleged damage to his health sustained as a result of the inhuman and degrading treatment in the detention centres.

56. The applicant disagreed.

2. The Court's assessment

(a) Conditions of detention

57. In so far as the applicant complained that he had been held in overcrowded cells, the Court reiterates that it 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 from 17 March 2010 onwards. It also held that only those applicants in respect of whose civil claims the three-year limitation period under 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).

58. In the present case the applicant was released from detention on 10 April 2010 (see paragraph 17 above). However he failed to lodge an

action for compensation under Article 24 and 448 of the Civil Code. 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 this specific complaint.

59. 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.

(b) Dangerous detainee regime

60. In so far as the applicant complained about the imposition of the "dangerous detainee" regime, the Court reiterates that although Article 35 § 1 of the Convention requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see *Egmez v. Turkey* no. 30873/96, ECHR 2000-XII, §§ 65 et seq.).

61. In the present case the Court observes that the applicant appealed to the penitentiary court against nearly all decisions classifying him as a dangerous detainee (see paragraphs 33 and 34 above). In consequence, the Court does not consider that, after these appeals were dismissed (see paragraphs above), he should, in order to fulfil his obligation under Article 35 § 1, have brought a civil action under Article 24 read in conjunction with Article 448 of the Civil Code.

62. Accordingly, the Court holds that the applicant should not in addition have sought to pursue the other remedy relied on by the respondent Government. It follows that the Government's preliminary objection must be rejected

63. Consequently, 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

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

65. He firstly stressed that his personal situation had not been properly analysed, and that the classification of him as a "dangerous detainee" had been imposed specifically in relation to the fact that he was a habitual offender who had escaped from the Warsaw Mokotów Remand Centre in

1992. The regime was subsequently extended "automatically" every three months. However, all these subsequent decisions were based on the same grounds, without any changes or new circumstances.

66. Secondly, the applicant referred to the particular severity of the restrictions to which he had been subjected under the special regime. He stressed that between 30 May and 4 September 2008 and 9 September and 11 December 2008 he was held in solitary confinement. He was placed alone in a cell for dangerous detainees. This situation was dangerous for him because of his health problems. As he had very serious backache and often felt dizzy and fainted, he needed help from another inmate.

67. In addition he had had to wear handcuffs and fetters during lengthy hearings before the Płock Regional Court despite his multiple health problems and spinal pain. In his opinion, since joined shackles were not used during transport between Warsaw and Płock, there had been no further need to impose them before the Płock Regional Court.

68. In conclusion, the applicant submitted that 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

69. 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 a person considered to pose a threat to prison security – a legitimate measure that had been fully justified under Polish law.

70. The Government maintained that the applicant had been classified as a dangerous detainee in accordance with the relevant provisions of law and with the aim of protecting others and guaranteeing order before the courts and in the penitentiary units. Before the Płock Regional Court four out of eleven detainees, including the applicant, had been classified as dangerous detainees.

71. The Government submitted that the applicant was required to wear joined shackles on only three occasions, that is on 2, 9 and 11 June 2008 during his trial before the Płock Regional Court. The measure was applied under paragraph 6 1 c of the Cabinet's Ordinance of 17 September 1990 on the conditions and method of use of direct restraint measures by police officers (*Rozporzadzenie Rady Ministrów z dnia 17 wresznia 1990 r. w sprawie okreslenia przypadków oraz warunków i sposobów uzycia przez policjantów srodków przymusu bezposredniego*). Furthermore, imposition of the joined shackles took place only after examination of the applicant's individual situation. Had there been any medical reason not to do so, such a

measure would not have been imposed. In addition, the applicant had not complained about the use of the joined shackles, nor had he demanded that the escorting officers remove them. In conclusion, they were of the opinion that the use of joined shackles was necessary and proportionate in the present case

72. Referring to the applicant's allegations that he had spent a significant period of time in solitary confinement, the Government pointed to the fact that the applicant's solitary confinement was not of an absolute character. For almost the whole period of his detention in Płock Prison he had been incarcerated in a cell of 6.92 sq. m. He was also able to contact his relatives. In this respect, relying on the Court's judgment in the case of *Ilascu et al v. Moldova and Russia* (no. 48787/99, § 428, ECHR 2004-VII), they pointed out that the imposition of this measure alone did not expose the applicant to ill-treatment within the meaning of Article 3.

73. The Government submitted that the applicant's "dangerous detainee" status had been the result of a personal check on the applicant. According to the applicable rules laid down in Polish law, namely 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" on the applicant every time he left or entered his cell. 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. The inspection of his body and clothes had taken place in a separate room with no third parties or persons of the opposite sex present. The checks had been conducted by guards of the same sex.

74. The Government also argued that during his detention the applicant had regularly sought and obtained medical care. He had been examined by various doctors on almost fifty occasions and had frequently received specialist assistance.

75. Lastly, as regards the number and nature of visits from family members and others, the Government considered that they had been granted often enough to help the applicant to maintain adequate contact and emotional links with his family. Such visits took place on at least nine occasions. The majority of those visits lasted one hour. In addition, the applicant was granted leave to attend his mother's funeral on 8 May 2009.

76. 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.

2. The Court's assessment

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

77. 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).

78. 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).

79. 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).

80. 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 pre-trial remand in custody 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 States Parties to the Convention more stringent security rules apply to dangerous detainees. These arrangements, intended to prevent 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).

81. 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).

82. When making its assessment of conditions of detention under Article 3 the Court 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).

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

84. 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 *Piechowicz*, cited above, § 165).

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

85. Turning to the facts of the present case, the Court notes that the decision of 1 June 2007 imposing the "dangerous detainee" regime on the applicant was a legitimate measure, warranted by the fact that the applicant had been charged with armed robbery, was a habitual offender and also had previously escaped from the Warsaw Mokotów Remand Centre (see paragraph 31 above). It was not therefore unreasonable on the part of the authorities to consider that, for the sake of ensuring prison security, 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.

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

87. It is true, as the Government pointed out (see paragraph 72 above), that although the applicant was in solitary confinement he was not subjected to complete sensory or social isolation, as there were periods during which he had a cellmate (see paragraphs 35 and 36 above). He also received family visits (see paragraph 38 above). Accordingly, he was not subjected to total isolation but rather to limited social isolation (see *Messina (no. 2)* (dec.), cited above, and *Ramirez Sanchez*, cited above, § 135).

88. The list of visits received by the applicant in detention shows that between July 2008 and December 2009 he received fourteen visits, of which nine were from his sister and son (see paragraph 38 above). However, between 28 October 2008 and 4 June 2009 he was not visited by anyone. In the Court's view this very limited opportunity for human contact did not mitigate sufficiently the consequences of his separation from others and his daily solitude for his mental and emotional well-being.

89. The Court had already noted in the *Piechowicz* case (see *Piechowicz,* cited above, § 172), referring to the 2009 CPT report, that not only was the regime itself very restrictive but also the Polish authorities in general failed to provide "N" wing inmates with appropriate stimulation and, in particular, with adequate human contact.

90. Likewise, in the present case 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 other than a daily solitary walk in a segregated area. When the applicant complained to the authorities, stressing his poor health, the authorities did place another inmate with him (see paragraph 35 above).

The Court would reiterate 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,* cited above, § 30, with further references). Considering the duration of the regime imposed on the applicant and the very limited opportunities for human contact available to him, the Court has no doubt that his prolonged solitude must have caused him serious distress and mental suffering.

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

92. In this respect the Court also has misgivings about 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 was carried out as a matter of routine and was not linked to any specific security needs, nor to any specific suspicion concerning the applicant's conduct (see paragraphs 36 and 73 above)

93. 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). However, it is not persuaded that 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 *Piechowicz,* cited above, § 176).

94. Having regard to the fact that the applicant was already subject to several other strict surveillance measures, that the authorities did not rely on any specific or convincing security requirements, and that, despite the serious charges against him, he apparently did not display any disruptive, violent or otherwise dangerous behaviour in prison, the Court considers that the practice of daily strip-searches applied to him for two years and some six 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 pre-trial detention (see *Horych*, cited above, § 101, and *Piechowicz*, cited above, § 176).

95. Lastly, the Court would add, as it has already held (see *Piechowicz*, cited above, § 177), 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 paragraph 45 above).

96. In the present case it emerges from the relevant decisions that, apart from the original grounds based essentially on the admittedly very serious nature of the charges against the applicant, which included armed robbery, his previous escape from detention, as well as his "serious lack of moral character", the authorities did not subsequently find any other reasons for classifying him as a "dangerous detainee" (see paragraphs 31, 32 and 34 above). While those circumstances could justify the imposition of the "N" regime on the applicant for a certain period, even a relatively long one, they could not suffice as the sole justification for its prolonged continuation. With the passage of time the procedure for review of the applicant's "dangerous detainee" status became a pure formality, limited to a repetition of the same grounds in each successive decision.

97. 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 severity of the measures taken exceeded the legitimate requirements of security in prison and that they were not necessary in their entirety 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 5 § 3 OF THE CONVENTION

98. The applicant complained that the length of his detention had been excessive. He relied on Article 5 § 3 of the Convention, which, 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."

99. The Government contested that argument.

A. Period to be taken into consideration

100. The applicant was remanded in custody in two concurrent sets of criminal proceedings. It started in the first set of proceedings on 18 May 2007, when he was arrested on suspicion of robbery (see paragraph 13 above). On 23 May 2007 the Ostrołeka District Court remanded him in custody on suspicion of illegal possession of weapons and robbery (see paragraph 21 above). He was released on 10 April 2010. However, between 18 May 2007 and 18 May 2008 he had been serving a sentence of imprisonment imposed in another set of criminal proceedings against him (see paragraph 26 above). In addition, on 18 December 2008 and 22 September 2009 he was convicted as charged by the Warsaw Court of Appeal and the Płock Regional Court (see paragraphs 18 and 25 above).

101. 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 period to be taken into consideration amounts to seven months.

B. The parties' submissions

102. The Government submitted a preliminary objection that the applicant had failed to exhaust the available domestic remedies since he had not appealed against some of the decisions extending his detention. They further maintained that the domestic authorities had shown special diligence and examined the applicant's situation afresh each time. Lastly, they were of the opinion that the length of the applicant's detention was closely connected with the proper conduct of the proceedings and the circumstances of the case.

103. The applicant maintained that his detention had been excessively long.

C. The Court's assessment

104. The Court does not find it necessary to examine the objection as to the exhaustion of domestic remedies raised by the Government, as this complaint is in any event inadmissible for the following reasons.

105. The Court firstly reiterates 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, have been set out in a number of its previous judgments (see, among many other authorities, *Kudła, cited above*, § 110 et seq., and *Bąk v. Poland*, no. 7870/04, §§ 56-65, 16 January 2007).

106. Turning to the circumstances of the instant case, the Court notes that the grounds given by the judicial authorities to justify the applicant's continued detention satisfied the requirement of being "relevant" and "sufficient". It further notes that his detention was reviewed by the courts at regular intervals, and that the two sets of the proceedings were very complex. In this connection the Court observes that the courts stressed the need to verify evidence from numerous suspects and witnesses, and that there was an extensive body of evidence to be considered. The Court also accepts that the reasonable suspicion that the applicant had committed serious offences, together with the likelihood of a severe sentence being imposed on him, warranted his initial detention.

107. Lastly, the Court observes that the applicant was charged with multiple offences committed with others.

108. For these reasons, the Court also finds that the domestic authorities cannot be criticised for failure to observe "special diligence" in the handling of the applicant's case.

109. In view of the above considerations and in the light of the criteria established in its case-law in similar cases, the Court considers that the overall period of the applicant's detention does not disclose any appearance of a breach of the "reasonable time" requirement of Article 5 § 3 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LENGTH OF PROCEEDINGS

110. The applicant complained that the length of the first set of proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

111. The Court notes that the proceedings began on an unknown date in 1991. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

112. The period in question ended on 22 September 2009 (see paragraph 16 above). It thus lasted sixteen years and some four months at one level of jurisdiction.

A. Admissibility

113. 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' submissions

114. The applicant maintained that the proceedings in his case have lasted an excessively long time.

115. The Government refrained from submitting any observations.

2. The Court's assessment

116. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

117. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

118. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject and the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

119. There has accordingly been a breach of Article 6 § 1.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. The applicant further complained under Article 6 § 1 alleging unfairness of the criminal proceedings against him. He also cited Article 13 of the Convention.

121. The Court finds that the facts of the case do not disclose any appearance of a violation of the above-mentioned provisions. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 §3 (a) and must be rejected in accordance with Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. The applicant claimed 100,000 Polish zlotys (PLN) in compensation for non-pecuniary damage.

124. The Government considered that the sum claimed was exorbitant and inconsistent with the Court's awards in similar cases.

125. The Court, having regard to its case-law and making its assessment on an equitable basis, awards the applicant EUR 12,000 in respect of non-pecuniary damage. It rejects the remainder of the claim.

B. Costs and expenses

126. The applicant did not ask for reimbursement of costs and expenses incurred before the domestic courts or in the proceedings before the Court.

C. Default interest rate

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 3 concerning the imposition of the "dangerous detainee" regime on the applicant and under Article 6 § 1 concerning the length of the first set of criminal proceedings 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 6 §1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 30 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President