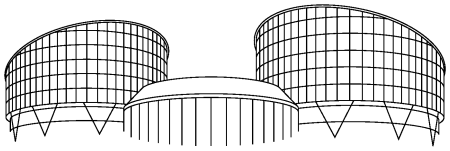

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JANUSZ WOJCIECHOWSKI v. POLAND

(Application no. 54511/11)

JUDGMENT

STRASBOURG

28 June 2016

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 Janusz Wojciechowski v. Poland,

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

András Sajó, *President,*
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 7 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 54511/11) 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 Janusz Wojciechowski ("the applicant"), on 28 July 2011.

2. The applicant was represented by Ms A. Ambroziak, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the conditions of his detention had not complied with the requirements of Article 3 of the Convention and that unreasonable restrictions on his right to manifest his religion, which were imposed on him in the remand centre in 2008, breached his freedom to manifest his religion.

4. On 7 November 2012 the application was communicated to the Government. In addition, third-party comments were received from the Helsinki Foundation for Human Rights (Warsaw, Poland), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Warsaw.

A. The period of the applicant's detention

6. The applicant was detained from 15 June 2007 until 21 January 2009 after a conviction. It appears that he was at first committed to a semi-open facility, Dobrowo Remand Centre, and following his reclassification as a habitual offender, to a closed-type facility, Koszalin Remand Centre.

B. The conditions of the applicants' detention

7. The following findings were made by the domestic courts in the course of the civil proceedings described below (see paragraphs 24-33 below). Neither the applicant nor the Government contested them.

8. For 309 days of his total period of detention in Koszalin Remand Centre, the applicant was held in cells which did not conform with the statutory minimum size of 3 sq. m per person. More particularly, the applicant had between 1.9 to 2.6 sq. m of personal floor space in his cells.

9. Initially, the toilet facilities in Koszalin Remand Centre were not separated from the living area of the cells in question. In 2008 or 2009, however, construction work started and the toilets were gradually enclosed by concrete walls with a door.

10. All of the applicant's cells were well-lit, ventilated and, when necessary, heated. They were equipped with enough bunk beds for each detainee to have a separate place to sleep, as well as a table, stools and cupboards.

11. In 2009 the Koszalin Remand Centre's day-room was turned into cells. However, detainees continued to have access to a library and various forms of leisure and cultural activities.

12. It appears that in Koszalin Remand Centre the applicant had one hour of outdoor exercise per day. Initially, the applicant had one hot shower per week. From 18 October 2007 that number was increased to five per month.

13. The applicant was assigned a top bed. He submitted that that was contrary to medical recommendations because he had health problems (see paragraphs 17-20 below). He did not submit any documents to that effect.

C. The applicant's religious practice in prison

14. The applicant submitted that for the whole of 2008 he had not been able to attend Sunday Mass at the remand centre.

15. As established by the domestic courts (see paragraphs 24-33 below), at the material time, three Catholic services had been organised on Sundays and one on religious holidays. Prisoners wishing to attend had to sign up with their supervisors (*wychowawca*). Subsequently, a list of persons approved for a particular Mass had been prepared by remand centre staff, with the help of a special computer program. The system had been designed to select prisoners on a rotation basis, according to their classification groups and in a way so as not to mix prisoners classed as dangerous detainees with those who did not require any special security measures. At times, however, individual prisoners were rejected because they did not belong to the group authorised to attend Mass on a particular day.

16. The remand centre register showed that the applicant had been authorised to attend Sunday Mass four times, twice in September and twice in November 2008.

D. The applicant's medical treatment

17. The domestic courts established that three years before his detention the applicant had been admitted to hospital because of inflammation of the testicles, prostatic hyperplasia, pneumonia and an unspecified skin condition, for which he had received treatment similar to that usually prescribed for dermatitis (*zapalenie skóry*).

18. During his detention in Koszalin Remand Centre, the applicant often made appointments with the in-house doctor because of colds, back ache and prostate problems. On 15 November 2007 a drug called Prostamol was prescribed for the applicant, in compliance with his wish. Another medicine which the applicant had previously taken for his prostate condition, Doxar, was not in the remand centre's stock. A generic medicine was offered to the applicant instead. Eventually, Doxar was sent to the prison by the applicant's relatives.

19. The applicant also received treatment for a scalp condition, tinea versicolor (*łupież pstry*). In addition to that treatment, from 18 October 2007 onwards, he was entitled to an additional monthly shower. On 20 June 2008 the applicant was examined by a dermatologist and his skin condition was diagnosed as seborrhoeic dermatitis (*łojotokowe zapalenie skóry*), a chronic inflammatory scalp disorder. Consequently, the applicant's treatment was changed slightly. It was also established that the first symptoms of that disorder had appeared prior to the applicant's detention, in 2004. An expert in dermatology, appointed by the domestic court, excluded the possibility that the applicant had developed the illness because of contact with an

allegedly dirty and mouldy mattress. The expert also concluded that the applicant had received the treatment which was usually prescribed in such cases by dermatologists. In the 18 months following diagnosis of the illness, the applicant was seen by a doctor on thirty occasions. Subsequently, throughout 2008, he made twelve medical appointments.

20. In 2008 the applicant also obtained dentures.

E. The applicant's actions concerning the conditions of his detention, the quality of medical care and restrictions on the practice of his religion

21. In 2007 and 2009 the applicant lodged a number of complaints with the Ombudsman, the Ministry of Justice and the relevant penitentiary court, informing them of the allegedly deplorable conditions of his detention, his inadequate medical care and of unreasonable restrictions on the practice of his religion during his detention in Koszalin Remand Centre.

22. On an unspecified date the Central Inspectorate of the Prison Service (*Centralny Inspektorat Służby Więziennej*) informed the applicant that his complaints had been considered ill-founded. It was established that the applicant had received adequate medical care. In particular, the remand centre had administered Prostamol and the other drug, Doxar, had been obtained with the authorities' permission from the applicant's relatives. The remand facility in Dobrowo had not registered any overcrowding. The applicant's cells had been adequately furnished and there had been place for each detainee at the cell's communal table.

23. In letters of 11 May and 15 June 2009, the authorities informed the applicant that he had had unrestricted access to religious services in Koszalin Remand Centre, in accordance with the special schedule. Moreover, the applicant's placement in overcrowded cells had been in compliance with the law, namely Article 248 of the Code of the Execution of Criminal Sentences.

24. The applicant, who was represented by a lawyer, also brought a civil action for infringement of his personal rights on account of overcrowding, inadequate medical care and unreasonable restrictions on the practice of his religion in Koszalin Remand Centre by means of attendance of Sunday Mass. He claimed 50,000 Polish zlotys (PLN) (approximately 12,000 euros (EUR)) in compensation. The domestic courts examined the claim under Articles 23, 24, 417 and 448 of the Civil Code (*Kodeks Cywilny*).

25. On 14 December 2010 the Koszalin District Court (*Sąd Rejonowy*) held that the applicant's placement in overcrowded cells for a period of 309 days during his detention constituted degrading and inhuman treatment within the meaning of domestic law and the Convention.

26. The rest of the applicant's complaints were considered ill-founded.

27. The evidence which was obtained by the civil court, *inter alia*, the applicant's medical history, witness testimony and the report of an expert in dermatology, had disproved the applicant's allegations that he had contracted his skin condition in the remand centre because his mattress had been dirty and damp and that his illness had been inadequately treated.

28. The domestic court considered that in view of the fact that the applicant had been authorised to attend Sunday Mass a total of four times in September and November 2008 and in the light of the testimony of the prison chaplain that the applicant had been free to request attendance in Sunday Mass, it could not be said that his access to religious services had been unreasonably restricted. It was also noted that detainees had been free to make individual appointments with the remand centre's priest. The applicant had not wished to do so at the material time.

29. Lastly, the applicant's submission that he had obtained a doctor's recommendation to have a bottom bunk had not been supported by any documents.

30. In view of the above, the Koszalin District Court awarded the applicant PLN 5,000 (approximately EUR 1,200) in non-pecuniary compensation on account of the suffering caused by his detention in overcrowded cells. The domestic court also ordered the applicant to pay PLN 1,200 (EUR 300) towards the costs of the proceedings.

31. The applicant submitted a hand-written appeal against the above-mentioned judgment, dated 24 January 2011. The document does not bear any stamps but is accompanied by an official note, confirming that on 24 January 2011 the applicant wished to send his appeal to the Koszalin District Court from Żytkowice Prison.

32. On 5 April 2011 the Koszalin Regional Court (*Sąd Okręgowy*) dismissed an appeal brought by the respondent and, apparently, the applicant's appeal. The first-instance judgment was upheld.

33. An appeal by the applicant against the judgment of the appellate court was rejected as no such appeal was available under the applicable law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions pertaining to conditions of detention

34. A detailed description of the relevant domestic law and practice concerning general rules governing the conditions of detention in Poland and domestic remedies available to detainees alleging that the conditions of their detention were inadequate are set out in the Court's pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) adopted on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively). More recent developments are described in the

Court's decision in *Łatak v. Poland* (no. 52070/08, §§ 25-54, 12 October 2010).

B. Provisions pertaining to the practice of religion in detention

35. Article 106 of the Code of the Execution of Criminal Sentences provides:

> "1. A convicted person shall have the right to practise a religion and to benefit from religious services, and to attend [in person] services taking place in prison on holidays and to listen to services broadcast by the media, as well as to have the necessary [religious] books, magazines and items.
>
> 2. A convicted person shall have the right to ... meet, on an individual basis, a clergyman of a church or of another religious faith to which [a convicted person] belongs; such a clergyman may visit convicted persons on the premises where [the convicted persons] are held.
>
> 3. Benefiting from religious freedom shall not breach the principles of religious tolerance or interfere with the established prison order.

36. On the basis of Article 160 of the Code, the Minister of Justice issued an Ordinance of 2 September 2003 on detailed rules on engaging in religious practices and benefiting from religious services in prisons and remand centres (*Rozporządzenie Ministra Sprawiedliwości w sprawie szczegółowych zasad wykonywania praktyk religijnych i korzystania z posług religijnych w zakładach karnych i aresztach śledczych)* ("the September 2003 Ordinance"). It entered into force on 27 September 2003.

Section 1of the September 2003 Ordinance provides:

> "1. Convicted persons shall have the right to attend services and meetings of a religious nature, including on an individual basis, which take place in a chapel or another suitable place ... on the premises of the prison or remand centre, further referred to as the 'establishment', in accordance with the establishment's settled internal order.
>
> ...
>
> 4. Religious practices and services of a private nature may also take place inside cells ... if they do not disturb the establishment's [order and security] and if it is secured that they take place in conditions of privacy."

According to section 2, paragraph 1 of the September 2003 Ordinance:

> "Convicted persons serving a sentence in a high-security establishment shall be accompanied to the places described in section 1, paragraph 1, by prison service officers."

Section 5 of the September 2003 Ordinance provides:

> "The Governor of an establishment shall take the necessary measures in order to secure the appropriate conditions for religious practices and services ... [the Governor] shall also take advice from the [prison] chaplain concerning the organisation of religious services."

THE LAW

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

37. The applicant complained under Article 3 of the Convention of overcrowding and resulting inadequate conditions during his detention in Koszalin and Dobrowo Remand Centres from 15 June 2007 until 21 January 2009. The relevant provision reads as follows:

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

A. Admissibility

1. The parties' submissions

38. The Government argued that the applicant could no longer claim to be a victim of a violation of Article 3 because the decisions of the domestic courts had acknowledged a violation of his personal rights and awarded him appropriate compensation. In particular, in its judgment of 14 December 2010 (upheld on 5 April 2011 by the Koszalin Regional Court) the Koszalin District Court had expressly held that the applicant's placement in overcrowded cells for a period of 309 days of his detention had constituted degrading and inhuman treatment within the meaning of domestic law and the Convention and had awarded the applicant PLN 5,000 in compensation.

39. In the Government's view, the results of the civil proceedings had constituted sufficient redress for the applicant. Consequently, the application was inadmissible *ratione personae* since the applicant had lost his victim status within the meaning of Article 34 of the Convention.

40. The applicant contested the Government's view that he had lost his victim status as a result of the above-mentioned civil court judgments. He stressed that the amount awarded had only constituted 10% of what he had claimed in the domestic proceedings. He also pointed to the fact that he was ordered to pay PLN 1,200 towards the costs of the proceedings.

41. The applicant argued that the compensation awarded by the domestic courts had not constituted sufficient redress for the purposes of Article 34 of the Convention.

2. The Court's assessment

42. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at

all stages of the proceedings under the Convention. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (*Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010 with further references).

43. In the present case, the applicant sued the State, claiming that the defendant had failed to ensure adequate conditions during his detention in Koszalin Remand Centre. The Koszalin District Court found for the applicant in so far as it held that his detention in overcrowded cells for a period of 309 days had constituted degrading and inhuman treatment within the meaning of domestic law and the Convention (see paragraph 25 above). The District Court's judgment was confirmed on appeal (see paragraph 32 above).

44. Therefore, the Court is satisfied that the national authorities have acknowledged a breach of the Convention in the relevant part regarding overcrowding, which is the core element of the applicant's complaint with the Court.

45. The only issue which remains to be determined is whether the authorities provided sufficient redress.

46. The Koszalin District Court awarded the applicant the equivalent of EUR 1,200, considering that amount to be adequate. The domestic court also ordered the applicant to pay the equivalent of EUR 300 towards the cost of the proceedings (see paragraph 30 above).

47. Taking into account the specific circumstances of the case, the amount awarded by the District Court is considerably below awards made by the Court in comparable cases (see, *mutatis mutandis*, *Olszewski v. Poland*, no. 21880/03, § 124, 2 April 2013, and the strike out decisions following a friendly settlement or a unilateral declaration by the Government in *Szpoton v. Poland*, no. 27209/14, 5 January 2016; *Stelmaszyk v. Poland*, no. 3754/11, 15 November 2011; and *Szafraniak v. Poland*, no. 29591/11, 15 November 2011).

48. In the light of the foregoing, the Court considers that the applicant can still claim to be a victim of a violation of the substantive aspect of Article 3 on account of overcrowding and resulting inadequate conditions of his detention. It therefore dismisses the Government's preliminary objection.

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

B. Merits

1. The parties' submissions

(a) The applicant

50. The applicant complained under Article 3 of the Convention of inadequate conditions of detention in Dobrowo and Koszalin Remand Centres. In particular, he submitted that for 309 days his cells had been so severely overcrowded that each prisoner had only 60 square cm of personal space. As a result, the applicant had spent most of the day sitting on his bed, unable to move around in the cell. For an unspecified period one of the applicant's fellow inmates had had to sleep on a mattress on the floor as there had been no space for a bed or for the inmate. The applicant also claimed that access to the toilet had been very limited, the cells had not been properly ventilated and the mattresses had been old, dirty and mouldy. Lastly, the applicant complained that he had been allowed only one shower per week and very limited time out of his cell (one hour of outdoor exercise per day).

(b) The Government

51. The Government refrained from making any comments.

2. The Court's assessment

52. A summary of the general principles concerning the examination of prisoners' conditions of detention under Article 3 can be found in *Orchowski* (cited above, §§ 119-222); *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 139-165, 10 January 2012) and *Karalevičius v. Lithuania* (no. 53254/99, § 39, 7 April 2005).

53. In particular, the Court found in *Orchowski* (cited above) that for many years, namely from 2000 until at least mid-2008, overcrowding in Polish prisons and remand centres revealed a structural problem consisting of "a practice that [was] incompatible with the Convention" (ibid., § 151).

54. This finding can only be confirmed in the circumstances of the instant case.

55. The Court recalls in this respect that it was established by the domestic courts, and uncontested by the applicant or the Government, that the applicant's detention in Koszalin Remand Centre was marked by serious overcrowding for a period of 309 days (see paragraph 8 above). Moreover, up until 2008 or 2009 the toilet areas were not separated from the living areas in the cells. The applicant had one hour of outdoor exercise per day and four or five showers per month (see paragraph 12 above).

56. Having regard to the circumstances of the case and their cumulative effect on the applicant, the Court considers that the distress and hardship which resulted from overcrowding, lack of separation of the toilet facilities

from the cell's living area and limited opportunities for outdoor exercise and keeping clean, exceeded the unavoidable level of suffering which is inherent in detention and went beyond the threshold of severity under Article 3 (compare with *Olszewski*, cited above, §§ 88-107, and *Canali v. France*, no. 40119/09, §§ 51-53, 25 April 2013).

57. It therefore finds that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 ON ACCOUNT OF INADEQUATE MEDICAL CARE DURING THE APPLICANT'S DETENTION

58. The applicant also complained under Article 3 of the Convention of that inadequate medical care had been secured to him in Dobrowo and Koszalin Remand Centres. He submitted that because of the poor sanitation conditions and limited opportunities for keeping clean he had contracted various skin diseases. Some of those ailments still affected the applicant up to this day. The applicant also complained that, contrary to doctor's recommendations, he had not been assigned a bottom bunk bed.

59. The Court notes that the applicant has a history of chronic prostate and skin ailments (see paragraphs 17 and 19 above). During his detention in Koszalin Remand Centre, he received medical treatment for colds, backache and for further prostate and skin problems (see paragraphs 18, 19 and 22 above). The applicant was seen by a prison doctor 30 times during the first 18 months after the illness was diagnosed and 12 times throughout 2008 (see paragraph 19 above). No specific information was submitted as regards the applicant's medical treatment in the semi-open Dobrowo Remand Centre.

60. The civil court which examined the applicant's action against the State held, relying on a report by an independent expert, the testimony of witnesses and the applicant's medical history records, that the applicant had not contracted dermatitis in Koszalin Remand Centre, as alleged by him, because of contact with an allegedly dirty and mouldy mattress, and that he had received adequate medical treatment in prison (see paragraphs 19 and 27 above). Similar conclusions were made by the Central Inspectorate of the Prison Service following the applicant's complaint (see paragraph 22 above).

61. The remaining issues related to the applicant's medical condition in Koszalin Remand Centre and in the semi-open Dobrowo Remand Centre, as described by the applicant, have not been the subject of examination by a civil court (see paragraph 25 above), or confirmed by a penitentiary court or other authority (see paragraph 23 above). They have also not been sufficiently corroborated by any documents or detailed submissions by the applicant (see paragraphs 14 and 30 above).

62. The Court is not in a position to establish whether or not the development of the applicant's prostate and skin conditions could have been prevented or slowed down if he had been released into the community and had been free to seek medical care from professionals of his choosing. It is very apparent in this case, however, that the authorities followed doctors' recommendations as to the appropriate treatment for the applicant and that his condition was regularly monitored by various specialists. In the absence of any medical certificates in support of the applicant's allegation that the medical care provided to him in prison was inadequate or insufficient, the Court will rely on the conclusions made by the medical expert appointed by the domestic court in the course of the applicant's civil proceedings for compensation (see paragraph 19 above). Thus the Court fully accepts that, during his detention in Koszalin Remand Centre, the applicant had received medical treatment which was typically prescribed in cases such as his by dermatologists and that his medical disorders, which dated to before his initial period of detention, did not have any connection with and did not directly result from his imprisonment and the conditions of his detention in the remand centre in question (see paragraphs 19 and 27 above).

63. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

64. Lastly, the applicant complained, without invoking any provision of the Convention that unreasonable restrictions had been imposed on his right to manifest his religion in the remand centre in 2008 in that he had not been authorised to attend Sunday Mass. This complaint falls under Article 9 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of ... religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

65. The applicant's lawyer further claimed in her observations following the communication of the application, without submitting any supporting documents, that during his detention the applicant had regularly signed up to the list of persons wishing to attend Sunday Mass. In spite of that the prison guards "had made his participation [at Mass] impossible". To support the applicant's claim that his religious practices had been hindered by the authorities, the lawyer also submitted that when both of the applicant's parents had passed away in 2008 the applicant had not been permitted to

attend their funerals. No documents have been attached in that connection and no further information has been provided in that respect.

66. The Government argued, making reference to the testimony which had been given by the prison chaplain in the civil proceedings, that the applicant had had every possibility to attend religious services at the remand centre, provided he signed up to them with his supervisor. They submitted that the applicant had followed the required procedure only four times and that as a result he had been granted authorisation to attend four Sunday masses in September and November 2008. The applicant had also been free to have individual meetings with a prison chaplain, but had never made such a request.

67. In view of the above considerations, the Government argued that the applicant's right to practice his religion had not been unreasonably restricted during his detention.

68. The Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*; "the Helsinki Foundation"), which was a third-party intervener in the case, submitted detailed information about the possibilities of religious practices in detention facilities. In particular, as stated by the Foundation, detention facilities in Poland in principle offered adequate opportunities for attending religious services to convicted prisoners, such as the applicant, who had not been classified as dangerous.

69. The case file shows that the applicant's detention facility offered opportunities for the practice of the Catholic religion through Masses on Sundays and on religious holidays and through individual meetings with a priest (see paragraphs 15, 23 and 28 above). It also shows that in 2008 the applicant's remand centre did not have the capacity to allow all its prisoners wishing to practise the Catholic religion to have unlimited access to group services (see paragraph 15 above). A system of enrollment and selection operated for that purpose. At first, prisoners wishing to attend had to sign up with their supervisors. Subsequently, a list of persons approved for a particular Mass was prepared by remand centre staff with the help of a computer program. That system had been designed to select prisoners on a rotation basis, according to their classification and aimed at not mixing detainees classified as dangerous with those who did not require any special security measures (see paragraph 15 above).

70. That being so, the submissions made by the parties are contradictory as to how many times the applicant followed the required enrollment procedure. The Court notes that the applicant's statement that he did so regularly throughout 2008, are not corroborated by any evidence (see paragraph 65 above). The Government's version that he was granted access to a Sunday service each time he asked for it, that is, twice in September and twice in November 2008, appears to be more credible in the light of the findings which were made by the domestic court in the course of the tort

proceedings, in particular in so far as they were based on the testimony of the prison chaplain (see paragraphs 66, 67 and 28 above).

71. Lastly, the allegation that the applicant had been unable to attend his parents' funerals does not appear to have ever been put before the domestic authorities and is not supported by any evidence.

72. In the light of all the material in its possession the Court does not find any indication that the applicant's religious practice, through his attendance of Sunday Mass, had not been made possible by the prison authorities.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 50,000 Polish zlotys (PLN), which is the equivalent of 12,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government argued that the amount sought was exorbitant.

77. The Court considers that the applicant suffered damage of a non-pecuniary nature as a result of his detention in conditions contrary to Article 3 of the Convention (see paragraphs 56 and 57 above). Making an assessment on an equitable basis, as required by Article 41 of the Convention, and in view of the award which has been already made by the domestic courts, the Court awards the applicant EUR 1,900 under this head.

B. Costs and expenses

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

C. Default interest

79. 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 of the Convention concerning the conditions during the applicant's detention admissible and the remainder of the application inadmissible;

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

3. *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 1,900 (one thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	András Sajó President