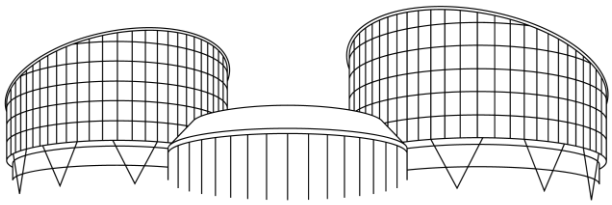

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ZARZYCKI v. POLAND

(Application no. 15351/03)

JUDGMENT

STRASBOURG

12 March 2013

FINAL

12/06/2013

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

In the case of Zarzycki v. Poland,

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

Ineta Ziemele, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges*,
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 19 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 15351/03) 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 Adam Zarzycki ("the applicant"), on 2 May 2003.

2. The applicant was represented by Ms M. Lubieniecka-Chełstowska, a lawyer practising in Olsztyn. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that in view of his physical disability and his special needs, his protracted detention in the conditions of Szczytno and Olsztyn Remand Centres was in breach of Article 3 of the Convention.

4. On 17 October 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). 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 § 2). The parties have not replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Jedwabno.

In 1996 he lost both his forearms in an accident. He is certified as having a first-degree disability, requiring the assistance of another person.

A. The applicant's pre-trial detention and criminal proceedings against him

6. On 17 June 2002 the applicant, who was a suspect in criminal proceedings, was summoned by the police to present himself, two days later, at the Szczytno District Police Headquarters (*Powiatowa Komeda Policji*).

7. On 19 June 2002 the Szczytno District Court (*Sąd Rejonowy*) remanded the applicant in custody on suspicion of having committed a number of offences against a minor and of having coerced a person into committing perjury.

8. The domestic court justified the applicant's pre-trial detention by the existence of strong evidence against him, the likelihood that a severe penalty would be imposed and by the need to secure the proper course of the proceedings. On the latter point, it emphasised that the applicant, who had remained at large for some time after the start of the investigation, had attempted to coerce witnesses into giving false testimony in the case. The authorities took into consideration the applicant's disability and a medical certificate issued by his doctor on 15 March 2002, which stated that the applicant was not able to live independently.

9. On 1 July 2002 the Szczytno District Prosecutor (*Prokurator Rejonowy*) dismissed the applicant's request for the pre-trial detention order to be lifted. The prosecutor reiterated the reasons for the applicant's pre-trial detention as they had been presented by the Szczytno District Court. Moreover, it was noted that the applicant had been detained for four months in the past in Szczytno Remand Centre, in connection with another criminal case against him. The Szczytno Remand Centre had never informed the authorities of any obstacles to providing the applicant with adequate care and conditions during his detention. In case of medical necessity the authorities were prepared to transfer the applicant to a remand centre hospital, where he would be able to obtain specialist medical treatment. It was pointed out that the testimony of the applicant's mother, who had submitted that the applicant was unable to live independently, had been contradicted by the statements of other witnesses who had described the applicant as being completely independent.

10. On 12 July 2002 the Olsztyn Regional Court (*Sąd Okręgowy*) upheld the decision to keep the applicant in pre-trial detention.

11. On 29 July 2002 the Szczytno District Prosecutor dismissed a request by the applicant for pre-trial detention to be replaced with a different preventive measure.

12. On 30 August 2002 the applicant was indicted on numerous counts of extortion of money from a minor and other related offences.

13. His pre-trial detention was extended by decisions of the Szczytno District Court of 5 August, 6 September and 31 October 2002. The last two decisions were upheld by the Olsztyn Regional Court on 27 September and 22 November 2002 respectively.

The domestic courts reiterated that there was strong evidence against the applicant and a likelihood that a severe penalty would be imposed, and referred again to the need to secure the proper course of the proceedings. Additionally, it was noted that the authorities needed more time to hear the witnesses for the defence and to complete other investigative steps.

14. In the meantime, on 1 July and 25 October 2002, the Olsztyn Regional Court dismissed the applicant's requests to have the measure in question lifted for humanitarian reasons.

15. The first hearing was held on 10 October 2002.

16. On 31 October 2002 the Szczytno District Court convicted the applicant of several of the charges and sentenced him to three years' imprisonment.

17. On 17 January 2003 the Olsztyn Regional Court decided to extend the applicant's detention while his criminal case was pending on appeal.

18. On 24 January 2003 the same court refused to lift the measure because the applicant had been convicted and sentenced to a term of imprisonment by the first-instance court. In addition, the court relied on the assessment that, despite the applicant's disability, his detention did not put his life or health at any risk.

19. On 31 January 2003 the Olsztyn Regional Court upheld its own decision of 17 January 2003.

20. On 19 February 2003 the Olsztyn Regional Court upheld the first-instance judgment in the main part, changing the legal classification of one of the offences of which the applicant had been convicted by the first-instance court. The judgment was served on the applicant on 26 May 2003.

21. No cassation appeal was lodged in the case.

22. Throughout the proceedings the applicant was represented by a lawyer of his choice.

B. The conditions of the applicant's detention

1. The chronology of the applicant's detention

23. From 19 June 2002 until 5 March 2003 the applicant was detained in Szczytno Remand Centre. From 5 until 28 March 2003 he was committed to Olsztyn Remand Centre. From 28 March until 7 July 2003 he was again detained in Szczytno Remand Centre.

24. On 7 July 2003 the applicant was granted leave from serving his sentence *(przerwa w odbywaniu kary*) to seek orthopaedic care outside the penitentiary system.

25. After his leave came to an end, the applicant was held in Szczytno and Olsztyn Remand Centres alternately. He was detained in the former facility from 13 July 2004 until 15 February 2005, from 9 until 17 August 2005 and from 25 April until 21 October 2006. He was detained in the latter facility from 15 February until 9 August 2005 and from 17 August 2005 until 25 April 2006.

26. On 21 October 2006 the applicant was granted parole (*warunkowe zwolnienie)* and is currently at liberty.

2. The description of the conditions of the applicant's detention and procedure for obtaining arm prostheses

(a) From 19 June 2002 until 7 July 2003- without prostheses

27. In Szczytno Remand Centre (from 19 June 2002 until 5 March 2003 and from 28 March until 7 July 2003) the applicant was held in various multi-occupancy cells in the general wing.

28. The applicant claimed that the conditions in Szczytno Remand Centre had not been adapted to his specific needs. He asserted that, despite his disability, the remand centre staff had not provided him with any special care. That had made his life in detention very difficult. The applicant had not been able to carry out many of his daily or routine tasks, such as serving his meals, making his bed, cutting his toenails, washing, shaving and getting dressed, and cleaning himself after going to the bathroom. He had had to seek help from his fellow inmates, which had put him in a position of dependency.

29. The Government submitted that during his detention the applicant had been self-sufficient. He had his meals, got dressed, made his bed and read newspapers without the aid of another person. Occasionally, in very minor tasks such as making sandwiches, he received help from his fellow inmates.

30. In their submission, the applicant was under the special care of the remand centre's administration. He was released from the duty to clean his cell and benefited from various privileges, such as longer family visits, the right to receive additional food parcels and to take a shower six times per

week. As a reward for winning various prison competitions, the applicant was granted unsupervised leave from the remand centre five times. Three of these periods of leave lasted a few days. The applicant was also under the supervision of the prison psychologist, whom he consulted eleven times.

31. Prior to the applicant's detention, on 15 March 2002 an orthopaedist of the Olsztyn Regional Specialised Hospital (*Wojewódzki Szpital Specjalistyczny*) issued a medical certificate (*zaświadczenie lekarskie*), stating that the applicant was not fit for self-sufficient existence and detention in a prison.

32. On 19 August 2002 the Head of the Medical Establishment at Szczytno Remand Centre (*Zakład Opieki Zdrowotnej*) issued a memorandum to the Governor (*Dyrektor*) of Szczytno Remand Centre, in which he stated that there was no medical reason to transfer the applicant to a specialist facility since his health was good. It was noted that the assistance which the applicant required was not of a medical nature but, rather, related to his physical inability to carry out his daily tasks independently.

33. In a letter of 3 September 2002 the remand centre governor informed the applicant that his complaints about the conditions of his pre-trial detention had been considered ill-founded. It was noted that the remand centre doctor had not found any medical reasons to justify the applicant's transfer to another place of detention or his release. Furthermore it was stated that the applicant was independent in his daily routines in the remand centre. He could dress himself, make his bed, eat, and read newspapers without anyone's assistance. In other daily tasks the applicant received help from his inmates.

34. On 13 October 2002 the applicant was informed by an official of a local self-government organisation, who visited him in the remand centre, about the procedure for renewing his application for prostheses.

35. The same day, the Szczytno Remand Centre's in-house doctor made an official application for prostheses on the applicant's behalf.

36. On 23 January 2003 the State-run Sick Fund (*Kasa Chorych*) approved a full reimbursement of the cost of basic mechanical prostheses (*protezy mechaniczne*), which was PLN 3,600 (approximately EUR 860). The prostheses were to be made by the Orthopaedic Equipment Establishment (*Zakład Sprzętu Ortopedycznego*) in Olsztyn.

37. By a letter of 28 February 2003 the Director of the Olsztyn Regional Prison Service (*Dyrektor Okręgowy Służby Więziennej*) replied to allegations that the Szczytno Remand Centre had not supported the applicant in his efforts to obtain forearm prostheses and that the medical care provided during his detention had been inadequate. It was observed that, prior to the applicant's detention, in July 2001 the Sick Fund had approved the applicant's request to obtain forearm prostheses free of charge. However, the grant could not be executed due to a shortage of funds. On

15 March 2002 the State Sick Fund extended the validity of its prostheses approval until 30 September 2002. On 13 October 2002 the applicant was informed by an official of a local self-government organisation, who visited him in the remand centre, about the procedure for renewing his application for prostheses. Despite this, the applicant did not proceed with his application for four months. Finally, thanks to the remand centre's assistance, on 23 January 2003 the State Sick Fund approved a full reimbursement of the cost of the prostheses. The applicant was scheduled to be transferred to Olsztyn Remand Centre in order to have the prostheses made in a local orthopaedic centre. It was concluded that the applicant's detention did not put his life or health at any risk and that, having had his forearms amputated six years previously, he was now perfectly independent in carrying out his daily routines in detention.

38. On 5 March 2003 the applicant was transferred to Olsztyn Remand Centre in order to have the prostheses made. The basic prostheses offered, however, did not suit the applicant. He declared that he would only accept bio-mechanical (kinetic) prostheses (*protezy biomechaniczne*). That type of prostheses were not made in Olsztyn but by the Independent Public Establishment for Orthopaedic Supplies (*Samodzielny Publiczny Zakład Zaopatrzenia Ortopedycznego)* in Poznań.

39. On 28 March 2003 the applicant was transferred back to Szczytno Remand Centre. An application for bio-mechanical prostheses was made by the prison authorities on his behalf.

40. On 7 May 2003 the Szczytno District Court found that the applicant's detention in Szczytno Remand Centre did not put his life or health in danger but created only minor difficulties for him.

41. The total cost of the applicant's bio-mechanical prostheses was estimated at 50,000 Polish zlotys (PLN) (approximately EUR 12,000). On an unspecified date the applicant was informed that a refund of PLN 3,600 (approximately EUR 860) could be granted by the National Health Fund (*Narodowy Fundusz Zdrowia*). Under the applicable law every patient seeking to obtain bio-mechanical prosthesis had to pay the difference from his or her own budget.

42. On 12 May 2003 the Olsztyn Regional Court ruled that the applicant be transferred to Poznań Remand Centre, where he could have fittings for his bio-mechanical prostheses, provided that he undertook to pay the non-refundable portion of the price. In the Government's submission, the applicant did not agree to that.

43. On 29 May 2003 a psychiatrist at Szczytno Remand Centre diagnosed the applicant with a form of depression which in his opinion could be attributed to the applicant's fear of not being able to obtain forearm prostheses. It was noted that the applicant had twice attempted to commit suicide when he had been held in a correction centre when he was a minor.

The doctor did not make any recommendation as to the conditions of the applicant's detention or his treatment.

44. A copy of the applicant's medical records reveals that during this part of his detention, he was consulted by various specialists on approximately twelve occasions.

45. On 7 July 2003 the applicant was granted a six-month period of leave from serving his sentence to seek orthopaedic care outside the penitentiary system. The domestic court observed that, even though the applicant's disability did not make him, strictly speaking, unfit for detention, it was nevertheless making it more difficult for him, especially without prostheses. The leave was subsequently extended until 7 July 2004.

(b) From 13 July 2004 until 21 October 2006 – with prostheses

46. While at liberty, presumably in March 2004, the applicant obtained two basic mechanical forearm prostheses and underwent the necessary physiotherapy (rehabilitation).

47. On 18 March 2004 the applicant obtained a medical certificate from a private medical clinic, stating that he had recently received new prostheses and urgently required physiotherapy. It was further noted that the applicant was not self-sufficient and required the aid of third persons, and that he could not be detained in prison.

48. On 7 July 2004 the applicant's leave came to an end but he failed to return to prison. On 13 July 2004 he was arrested and committed to Szczytno Remand Centre to serve the rest of his prison sentence.

49. The applicant was detained in Szczytno Remand Centre from 13 July 2004 until 15 February 2005, from 9 until 17 August 2005 and from 25 April until 21 October 2006. He was also detained in Olsztyn Remand Centre from 15 February until 9 August 2005 and from 17 August 2005 until 25 April 2006.

50. By letter of 25 November 2004 the director of a rehabilitation centre in Szczytno (*Ponadlokalne Centrum Rehabilitacyjno-Edukacyjne dla Dzieci i Młodzieży Niepełnosprawnej*) provided the applicant with the following information. According to the results of the medical consultation of 10 November 2004 and the opinion of a specialist in rehabilitation, the applicant did not require any further rehabilitation or training in using his arm prostheses. With his basic mechanical prostheses, the applicant could carry out simple daily tasks such as eating and brushing his teeth. Those prostheses, however, did not allow for high precision movements, such as those necessary for washing, putting on smaller items of clothing, shaving or going to the bathroom.

51. On 26 November 2004 the Governor of Szczytno Remand Centre applied to the Szczytno District Court for permission to transfer the applicant to a detention facility near Poznań in order to enable him to undergo further physiotherapy.

On 30 November 2004 the request was rejected by the Szczytno District Court on the ground that the applicant's presence was necessary in Szczytno, where new criminal proceedings were pending against him.

52. On 17 January 2005 the Szczytno Remand Centre governor informed the applicant, in reply to the latter's query, that during his detention "adequate help was secured [to him] by the remand centre administration through the applicant's inmates". It was also noted that the applicant had refused to work with a physiotherapist whose presence at the remand centre had been arranged by the administration.

53. On 7 and 20 April 2005 an in-house doctor at Olsztyn Remand Centre issued two medical certificates stating that the applicant could not receive adequate care and treatment in prison because of the nature of his disability.

54. On 25 April 2005 the Szczytno District Court asked for an expert medical report to verify whether or not the applicant was fit to be kept in prison.

55. On 21 June 2005 two experts, in cardiology and orthopaedics respectively, issued a report, stating that although the applicant found his prostheses helpful, he still needed the assistance of others in many of his daily activities, as his mechanical prostheses did not allow him to make any precise movements. It was noted that the applicant had expressed a wish to obtain more advanced bio-mechanical prostheses, which were available from the Orthopaedic and Rehabilitation Equipment Establishment in Poznań. In addition, the applicant was diagnosed with hypertension. Nevertheless, the experts concluded that the applicant had adapted well to his disability and that his overall health was good which, in turn, made him fit to continue his detention. On the other hand, it was pointed out that some assistance should be provided to the applicant in his daily routines by the remand centre staff.

56. On 8 November 2005 the Head of the Healthcare Establishment (*Kierownik Zakładu Opieki Zdrowotnej*) of Olsztyn Remand Centre informed the applicant of the following: the applicant's disability did not require any medical treatment; his other ailments could be treated within the prison healthcare system; bio-mechanical prostheses were not refunded by the National Health Fund; and lastly, according to the applicable law, a person with a first-degree disability required the assistance of another person in his or her daily existence. Such assistance could not be provided to the applicant in the remand centre. Nevertheless, as stated in the expert opinion of 21 June 2005 (see paragraph 49 above), the applicant was fit for detention because he was well-adjusted to his disability.

57. The applicant provided the Court with a document dated 23 December 2005 in which the Deputy Governor of Olsztyn Remand Centre stated that the applicant had been detained in a four-person cell in wing A, which was not adapted for special needs prisoners. It was also

noted that Olsztyn Remand Centre as such did not possess any cells in which special arrangements had been made to accommodate the needs of physically disabled persons.

58. The Government submitted that in Olsztyn Remand Centre the applicant had been committed to a wing in which cells had been kept open almost all day long. Other than that, the conditions of the applicant's detention there were similar to those in Szczytno Remand Centre.

59. A copy of the applicant's medical records reveals that during this part of his detention, he was consulted by various specialists on approximately sixty occasions.

3. Actions concerning the conditions of the applicant's detention.

60. The applicant lodged numerous complaints with the administration of Szczytno Remand Centre, domestic courts and penitentiary authorities, arguing that he should not be detained due to his disability or, alternatively, that he should be offered special care. In addition, he complained about the difficulties he had had in obtaining forearm prostheses (see paragraphs 28, 29, 32 and 35 above).

61. On 13 October 2003 the Szczytno District Prosecutor (*Prokurator Rejonowy*) discontinued an inquiry into the applicant's allegations that between 19 June 2002 and 7 July 2003 the staff of Szczytno Remand Centre had failed in undertaking the necessary actions to provide the applicant with arm prostheses. The authorities referred to the events described in paragraphs 34-42 above and concluded that the prison authorities had not acted to the applicant's detriment but, to the contrary, had made extensive efforts to provide him with arm prostheses.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General conditions of detention

62. A detailed description of the relevant domestic law and practice concerning general rules governing 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 given in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively and in the case of *Kaprykowski v. Poland*, no. 23052/05, §§ 40-47, 3 February 2009).

B. Detention of disabled detainees

63. Article 96 of the Code of Enforcement of Criminal Sentences ("the Code") establishes a "therapeutic regime" under which convicted persons with mental of physical disabilities who require specialised treatment, in particular psychological or medical care, or rehabilitation, can serve their prison sentences.

64. Furthermore, Article 97 § 1 of the Code provides that with regard to prisoners serving their penalty under a therapeutic regime, the authorities should be guided, *inter alia*, by the need to prepare these prisoners for a self-sufficient life. According to paragraph 2 of that provision, the execution of the prison sentence is to be adapted to the prisoner's needs in the area of medical treatment and hygiene and sanitary requirements. Lastly, paragraph 3 of this provision provides that convicted persons who no longer require specialised treatment should be transferred to another appropriate prison regime.

65. On the basis of Article 249 of the Code, on 25 August 2003 the Minister of Justice issued the Ordinance on the code of practice for the organisation and arrangement of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*) ("the 2003 Ordinance on Pre-Trial Detention") and the Ordinance on the code of practice for the organisation and arrangement of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*) ("the 2003 Ordinance on Imprisonment"). Both ordinances entered into force on 1 September 2003.

66. The 2003 Ordinance on Pre-Trial Detention and the 2003 Ordinance on Imprisonment both state that pre-trial detention and detention after a conviction must take place in remand centres and prisons respectively. However, both acts provide for exceptions to the standard regime of detention.

67. Paragraph 28 of the 2003 Ordinance on Pre-Trial Detention and paragraph 26 of the 2003 Ordinance on Imprisonment provide that the governor of a remand centre or a prison may, at the request of or after consultation with a doctor, make necessary exceptions to the arrangements for pre-trial detention or imprisonment as laid down in the relevant code of practice, in so far as this is justified by the state of health of the detainee concerned. The provisions apply to detainees with a physical disability.

68. The detention of disabled persons is not regulated any further by Polish domestic law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicant complained that in view of his disability and his special needs, his protracted detention in the conditions of Szczytno and Olsztyn Remand Centres had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

The Government's objection on exhaustion of domestic remedies

70. The Government raised a preliminary objection, arguing that the applicant had not exhausted the domestic remedies available to him.

(a) The Government

71. They submitted, in their letter dated 3 March 2008, that the applicant should have brought a civil action for compensation under Articles 23 and 24 of the Civil Code, read in conjunction with Article 448 of that Code. That remedy would have enabled him to seek compensation for the alleged infringement of his personal rights, namely, his dignity and health, suffered on account of the authorities' alleged failure to secure to him care and conditions adequate to his special needs during his detention.

72. In that connection the Government referred to nine judgments in which domestic courts had examined claims for compensation brought by former detainees on account of the alleged infringement of their personal rights (see, for example, *Orchowski*, cited above, §§ 82 and 83, and *Sławomir Musiał v. Poland*, no. 28300/06, § 59, 20 January 2009).

73. In four of the cases cited by the Government, which had been examined by domestic courts in 2005, 2006 and 2007, the plaintiffs, non-smokers detained with smoking inmates, had been awarded compensation (ranging from PLN 2,000 to PLN 5,000) because it had been found that they had been at risk of suffering or had actually suffered a health disorder (plaintiffs W.L., N.S., L.W. and K.K.)

74. One of these cases was examined under Articles 23 and 224 of the Civil Code, read in conjunction with Article 448 of that Code. The remaining three cases were examined under Article 417 or 445 of the Civil Code. The notion of damage under the latter provisions was linked with the liability *ex delicto*. The provisions relied on concerned both material and non-material damage. The former was defined as a physical injury or health disorder resulting from an unlawful act or omission. The latter could be

manifested by negative mental experiences suffered by the plaintiff as a result of his physical injury or health disorder.

75. Another of the cases referred to concerned a prisoner who had suffered food poisoning in prison (plaintiff S.L.; judgment of the Olsztyn Regional Court of 6 March 2007) and another concerned a detainee who had been beaten up by a fellow inmate (plaintiff M.P.; judgment of the Szczecin Court of Appeal of 29 March 2007).

76. In another case, brought by a certain J.K., who had been detained for seven days in an overcrowded and insanitary cell, the Warsaw Court of Appeal (judgment of 27 July 2006) granted partial compensation on account of the fact that the prison governor had failed to inform the competent penitentiary judge, in compliance with the applicable procedure, about the problem of overcrowding at the time when the plaintiff was serving his sentence there. In the similar case of a certain S.G. the Cracow Court of Appeal (judgment of 23 February 2007) held that there had been no legal basis to grant compensation for detaining the plaintiff in an overcrowded cell.

77. Lastly, in the case of a certain R.D. the Łódź Court of Appeal (judgment of 8 September 2006) awarded the applicant compensation in the amount of PLN 7,500 because the plaintiff was found to have been at a real risk of contracting a disease from his HIV-positive fellow inmates and had experienced significant psychological suffering.

78. The Government further submitted that under the above-mentioned provisions of the Civil Code a plaintiff could also ask the civil court to impose an injunction, requiring the penitentiary authorities to cease the infringement of his personal rights, for example, by relocating him to another cell. They did not supply any specific example of a successful request to this effect.

79. In view of the foregoing, 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.

(b) The applicant

80. The applicant did not submit any comments in that regard.

(c) The Court's assessment

81. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others*

v. Turkey, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

82. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (ibid., § 68).

In addition, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (ibid., § 69).

83. It must be noted that the applicant lodged his application with the Court on 2 May 2003. By that time he had already spent nearly one year in continuous detention (see paragraph 23 above). He complained to the Court that in view of his disability and his special needs, his protracted detention in the conditions of Szczytno and Olsztyn Remand Centres had been in breach of Article 3 of the Convention.

The applicant filed numerous applications for release from pre-trial detention on humanitarian grounds and lodged many complaints with the administration of Szczytno Remand Centre, domestic courts and penitentiary authorities, arguing that he should not be detained due to his disability and, alternatively, that he should be offered special care. He also complained to various domestic authorities about the difficulties he had had in obtaining forearm prostheses (see paragraphs 9, 14, 18, 32, 33, 37, 40, 52, 54, 56 and 60 above).

84. The Government argued that the applicant should have brought, in addition to the above-mentioned appeals, a civil action for compensation under Articles 23 and 24 of the Civil Code, read in conjunction with Article 448 of that Code. In their opinion, that remedy would have enabled him to seek compensation for the alleged infringement of his personal rights, suffered on account of the authorities' alleged failure to secure to him care and conditions adequate to his special needs during his detention.

85. In the Court's view, it cannot be said that the applicant did not sufficiently bring his situation to the attention of the competent authorities or seek improvement of the conditions of his detention.

In the first year the authorities decided to maintain the detention measure because the applicant was considered fit for it. Subsequently, the applicant was granted a twelve-month-long period of leave from serving his sentence to seek orthopaedic care outside the penitentiary system. The second term of the applicant's detention lasted two years and three months despite discrepancies between different medical reports concerning his level of self-sufficiency and fitness for detention. Eventually, the applicant was released on parole.

86. The Court takes note, however, of the examples of domestic cases provided by the Government, in which various provisions of the Civil Code had been successfully relied on with the effect of granting prisoners compensation for non-material damage which had been suffered on account of an unlawful interference with their right to protect themselves from passive smoking, food poisoning, being beaten up by a fellow inmate or of being exposed to a real risk of contracting a disease from HIV positive inmates. It should be stressed that almost all the judgments referred to by the Government were rendered after the date on which the applicant had lodged his application with the Court.

87. The issue of the effectiveness and adequacy of the Polish civil remedies was already examined by the Court in a case similar to the present one, in which an epileptic prisoner complained of inadequate medical care (see *Kaprykowski*, cited above). The Court welcomed the developments in domestic jurisprudence in the field of personal rights. It was not persuaded, however, that the judgments referred to by the Government could have any parallel effect in the area of claims arising from inadequate medical care in detention and whether they could be considered examples of a common and well-established practice (see *Kaprykowski*, cited above, § 55).

88. It must be observed that the applicant in the instant case did not suffer during his detention from any health ailment requiring that he be provided with medical supervision or treatment. He had a serious physical disability, which, as he alleged, made him unable to attend to himself without the aid of another person and meant that he needed special care.

89. It cannot therefore be said that the examples from domestic case-law supplied by the Government show that, in the circumstances of the instant case and, more particularly, in May 2003, when the applicant brought his application under the Convention, an action under Article 445 or Article 448 of the Civil Code could have offered him reasonable prospects of securing more adequate conditions or a special care regime during his detention (see *Kaprykowsk*i, cited above, §§ 54-57 and *Kulikowski v. Poland (no. 2)*, no. 16831/07, § 52, 9 October 2012).

90. In view of the above, the Court is not satisfied that the civil remedies relied on by the Government in the present case would have been adequate and effective in connection with the applicant's complaint concerning the lack of special care during his detention. Nor does it consider that the

Government have demonstrated the effectiveness, at the time when the applicant lodged the application with the Court, of any other remedy in the domestic law system which the applicant should have used to obtain the requisite relief in addition to his administrative and penitentiary complaints or his *habeas corpus* applications.

Accordingly, the Government's objection on the ground of non-exhaustion of domestic remedies must be rejected.

91. The Court also 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

(a) The applicant

92. The applicant complained that in view of his disability and his special needs, his protracted detention in the conditions of Szczytno and Olsztyn Remand Centres had been in breach of Article 3 of the Convention. More precisely, the applicant asserted that, despite his disability, the remand centre staff had not provided him with any special care. That had made his life in detention very difficult because he had not been able to carry out many of his daily or routine tasks, such as serving his meals, making his bed, cutting his toenails, washing, shaving and getting dressed, and cleaning himself after going to the bathroom. He had had to seek help from his inmates, which had put him in a position of dependency.

93. In addition, the applicant complained that the penitentiary authorities had failed to arrange for him to be provided with the necessary forearm prostheses.

(b) The Government

94. The Government argued that during his detention the applicant had not suffered inhuman or degrading treatment which had attained the minimum level of severity within the meaning of Article 3 of the Convention.

95. Moreover, they submitted that the applicant's disability had been taken into consideration when the domestic court decided to remand him in custody in connection with the criminal proceedings pending against him at that time. The applicant remained under medical supervision throughout his entire detention and his fitness for detention was the subject of regular assessment by the domestic courts and penitentiary authorities.

96. Lastly, the Government noted that the relevant authorities had actively assisted the applicant in the procedure for obtaining mechanical and

bio-mechanical prostheses. In view of the applicant's passive attitude, it was only thanks to the administration of Szczytno Remand Centre that the State Sick Fund approved a full reimbursement of the mechanical prostheses. The applicant was transferred without undue delay to Olsztyn Remand Centre, where the prostheses were to be made. The fact that they were not made during the applicant's first term of detention was to be blamed entirely on the applicant, who declared that he would only accept the more advanced bio-mechanical prostheses.

97. It was also stressed that the applicant had had his arms amputated many years before his detention. He was well-adjusted to his disability, as he had not used prostheses when he was at liberty. He could therefore function in detention without experiencing any particular discomfort on account of his amputated forearms.

(c) The Helsinki **Foundation for Human Rights**

98. The written comments submitted on 31 January 2008 by the Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*) ("the Foundation") contain an extensive overview of the domestic law and practice concerning the detention of persons with disabilities and a comparative study of relevant regulations and practices in the United Kingdom and the United States.

2. The Court's assessment

99. In accordance with the Court's settled case-law ill-treatment must attain a minimum level of severity to fall under Article 3 of the Convention. 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 (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; and *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009).

100. The Court has considered treatment to be "degrading" within the meaning of Article 3 because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła*, cited above, § 92). The Court will have regard to whether the object of such treatment is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, for example, the *Raninen v. Finland* 16 December 1997, § 55, *Reports of Judgments and Decisions*, 1997-VIII). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

101. 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. Measures depriving a person of his liberty may often involve such an element. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees or place them in a civil hospital, even if they are suffering from an illness which is particularly difficult to treat (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX), it nonetheless imposes an obligation on the State to 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 the 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).

102. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability (see *Price*, cited above, § 30 and *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004).

103. In this type of cases, the Court must take account of three factors in particular in assessing whether the continued detention of an applicant is compatible with his or her state of health where the latter is giving cause for concern. These are: (a) the prisoner's condition, (b) the quality of care provided and (c) whether or not the applicant should continue to be detained in view of his or her state of health (see, for example, *Farbtuhs*, cited above, § 53).

104. In applying these principles, the Court has already held that detaining persons suffering from a serious physical disability in conditions inappropriate to their state of health or leaving such persons to rely on their cellmates in receiving assistance to relieve themselves, bathe and get dressed or undressed, amounted to degrading treatment (see *Price*, cited above, § 30; *Engel v. Hungary*, no. 46857/06, §§ 27-30, 20 May 2010; and *Vincent v. France*, no. 6253/03, §§ 94-103, 24 October 2006).

105. The Court will now examine whether, in view of all the circumstances of the present case, the applicant's continued detention was compatible with his disability and whether that situation attained a sufficient level of severity to fall within the scope of Article 3 of the Convention.

106. As to the prisoner's condition, it is undisputed that the applicant, who had amputated forearms, was certified as someone requiring the assistance of a third person (see paragraphs 5 and 32 above) and was initially declared not fit for self-sufficient existence and detention in prison (see paragraph 31 above). Later on, it was considered that the assistance

which the applicant required was not of a medical nature (see paragraphs 32 and 33 above) and that his disability did not make him, strictly speaking, unfit for detention (see paragraphs 45 above). It was nevertheless acknowledged that the applicant's physical condition made his detention very difficult, especially during the period of approximately thirteen months when he did not have arm prostheses (see paragraphs 40 and 45 above).

107. The applicant claimed that during both periods of his detention he had not been able to carry out many of his daily or routine tasks, such as serving his meals, making his bed, cutting his toenails, washing, shaving and getting dressed, and cleaning himself after going to the bathroom (see paragraph 28 above).

The Government submitted that the applicant had for the most part been self-sufficient (see paragraphs 29, 37 and 97 above) and that he had received special treatment in prison. For example, he had been released from a prisoner's ordinary duties, such as cleaning his cell, and enjoyed wider privileges, such as longer family visits and a shower six times per week (see paragraph 30 above).

108. It was also stressed that thanks to the actions of the penitentiary authorities and the granting the applicant leave from serving his sentence, the applicant had obtained two mechanical forearm prostheses. From that time on, he became even more independent and fit to be detained (see paragraph 96 above).

109. The Court observes that a series of medical reports which were drafted after the applicant had been equipped with mechanical prostheses clearly stated that he was not self-sufficient and fit to be detained in a prison (see paragraphs 47, 50, 53 and 55 above). In November 2004 and June 2005 it was considered that although the prostheses helped the applicant in carrying out simple daily tasks such as eating and brushing his teeth, they did not allow for high precision movements, such as those necessary for washing, putting on smaller items of clothing, shaving or cleaning after going to the bathroom (see paragraphs 50 and 55 above). In April 2005 it was declared that the applicant could not receive adequate care and treatment in prison because of the nature of his disability (see paragraph 53 above).

110. As to the quality of care provided to the applicant in prison, the Court observes that during the first period of the applicant's detention the authorities undeniably took some steps to ensure that adequate treatment was provided to meet his special needs.

111. At first, the governor of Szczytno Remand Centre sought to transfer the applicant to a specialised medical facility (see paragraph 32 above) but no medical reason for such a transfer was found by the head of the remand centre's medical establishment (see paragraphs 32 and 33 above). In consequence, the applicant remained in the remand centre and special arrangements were made in an attempt to relieve or to make up for the

hardships of his detention. For example, the applicant was allowed to have six showers per week and was exempted from ordinary prisoner's duties such as cleaning his cell and granted longer or more frequent family visits (see paragraph 30 above).

112. In addition, it is clear that the State authorities actively assisted the applicant in the procedure for obtaining mechanical, and later bio-mechanical, arm prostheses. The necessary applications were made on the applicant's behalf by the prison doctors, a full reimbursement of the cost of basic mechanical prostheses was approved by the State Sick Fund and the applicant was transferred to different detention facilities where he could have the prostheses of his choice made and fitted (see paragraphs 35 – 42 above). When it became clear that, despite those efforts, the applicant would not be able to obtain prostheses of an advanced bio-mechanical type in prison, he was granted leave from serving his sentence to seek orthopaedic care outside the penitentiary system (see paragraph 45 above).

113. During the second period of his detention, the applicant used basic mechanical prostheses. As stated by various medical authorities, those prostheses enabled him to carry out simple daily tasks such as eating and brushing his teeth. They did not allow, however, for high precision movements, such as those necessary for maintaining personal hygiene or putting on smaller items of clothing (see paragraphs 50 and 55 above). Consequently, it was recommended that some assistance be provided to the applicant in his daily routines by the remand centre staff (see paragraph 55 above).

114. It is unclear whether during the second period of his detention the administration of Szczytno and Olsztyn Remand Centres made the same practical arrangements for the applicant as during his first period of detention (see paragraph 111 above).

115. The Court takes note, however, of the submission that Szczytno Remand Centre had arranged for a physiotherapist to come to the centre but the applicant had refused, for an unspecified reason, to undergo rehabilitation with that person (see paragraph 52 above).

116. Throughout both periods of his detention the authorities took steps to ensure that the applicant was assisted by his fellow inmates (see paragraphs 28, 29 and 33 above). The letter of the governor of Szczytno Remand Centre dated 17 January 2005 (see paragraph 52 above) confirms that the authorities made arrangements within the remand centre to enable the applicant to call on his fellow inmates when the need arose. On the facts of the applicant's case, it cannot be said that the authorities abandoned their obligations towards the applicant and left him to rely entirely on the availability and goodwill of his fellow prisoners. The applicant's case is therefore to be distinguished from the case of *D.G. v. Poland*, no. 45705/07, §§ 45 and 147, 12 February 2013 (not yet final).

117. The Court also observes that the applicant's condition clearly did not require any specialised care, for which a type of a formal nurse training would be necessary (see paragraph 32 above). The applicant was for the most part autonomous, especially after he started using the prostheses, and the assistance which he needed was limited to common washing and dressing tasks which required higher precision (see paragraphs 28, 29, 33, 50 and 55 above).

118. It is true that the Court often criticised the scheme of providing routine assistance to a prisoner with a physical disability through cellmates, even if they were volunteers and even if their help was solicited only when the prison infirmary was closed (see *Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004). In the particular circumstances of the present case, however, the Court does not find any reason to condemn the system which was put in place by the authorities to secure the adequate and necessary aid to the applicant (see *Turzyński v. Poland* (dec.), no. 61254/09, § 40, 17 April 2012).

119. On the subject of access to a shower, the Court observes that giving the applicant an unlimited daily possibility of washing himself under the shower would have been an ideal solution to his hygiene maintenance prolems. On the other hand, the Court is aware of the practical difficulties of managing various groups of detainees and of reconciling their individual needs with the requirements of prison security. It is to be noted that the applicant's access to a shower room was by far more frequent than that of an ordinary prisoner and sufficient for him to keep clean, including, after going to the toilet. In view of these considerations, the Court is satisfied that by allowing the applicant to use a shower room six times per week, the authorities adequately responded to his special needs (contrary to, *Price v. the United Kingdom*, no. 33394/96, §§ 28-30, ECHR 2001-VII and *Melnītis v. Latvia*, no. 30779/05, § 75, 28 February 2012).

120. Furthermore, the Court takes notice of the submissions of the Helsinki Foundation for Human Rights about the inadequate treatment of prisoners with disabilities in Polish prisons and remand centres (see paragraph 98 above). It is also accepted, against this general background, that Olsztyn and Szczytno remand centres, to which the applicant was committed, were not adapted for special needs prisoners (see paragraphs 27, 28, 57 above).

On the other hand, it is clear that the existence of ordinary architectural or technical barriers did not affect the applicant, who had amputated forearms but not a mobility disorder and was able to access the medical and other prison facilities, outdoor exercise areas and fresh air (contrary to *Arutyunyan v. Russia*, no. 48977/09, §§ 77 and 81, 10 January 2012 and *Cara-Damiani v. Italy*, no. 2447/05, § 70, 7 February 2012).

121. Lastly, the Court will examine the applicant's complaint that the penitentiary authorities had failed to arrange for the necessary forearm prostheses to be provided to him.

122. It must be noted that upon his arrest in 2002 the applicant was actively assisted by the penitentiary authorities and various institutions in the procedure for obtaining mechanical, and more advanced bio-mechanical, prostheses (see paragraphs 34-42 above). A full reimbursement of the cost of the basic-type prostheses was approved without any undue delay by the State Sick Fund (see paragraph 36 above) and the necessary notices were obtained with regard to the financing of bio-mechanic prostheses, which the applicant decided to get instead (see paragraphs 41 and 42 above). Eventually, the applicant obtained mechanical prostheses free of charge and underwent the necessary physiotherapy (see paragraph 46 above).

123. In the light of the above findings, the Court is satisfied that the penitentiary authorities actively looked for, and succeeded without undue delay in providing, an appropriate solution to the applicant's situation (contrary to *Vladimir Vasilyev v. Russia*, no. 28370/05, §§ 67-69, 10 January 2012).

124. In so far as the applicant may be understood to be complaining that the State did not approve a full refund of the cost of advanced-type bio-mechanical prostheses, the Court observes that the case does not relate to a systemic problem caused by flaws in the medical insurance system for providing orthopaedic or prosthetic care to detainees deprived of any financial means, contrary to the factual situation in the case of *V.D. v. Romania* (no. 7078/02, § 86-88, 16 February 2010). It should be added that under the Polish legislation every patient seeking to obtain bio-mechanical prosthesis could claim only a very limited refund and had to pay the difference from his or her budget.

Consequently, bearing in mind that the basic-type mechanical prostheses were available and indeed provided to the applicant free of charge and that a refund of a small part of the cost of bio-mechanic prostheses was also available, the Court considers that the respondent State cannot be said, in the circumstances of the present case, to have failed to discharge its obligations under Article 3 by not paying the full costs of a prosthetic device of an advanced type (see, by comparison, *Nitecki v. Poland* (dec.), no. 65653/01, 21 March 2002).

125. In conclusion, the Court notes the pro-active attitude of the prison administration vis-à-vis the applicant. The competent authorities provided the applicant with the regular and adequate assistance his special needs warranted (see paragraphs 110-125 above). Moreover, there is no evidence in this case of any incident or positive intention to humiliate or debase the applicant. The Court holds, therefore, that even though a prisoner with amputated forearms is more vulnerable to the hardships of detention, 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 contrary to, *Price,* cited above, §§ 28-30, *Engel v. Hungary*, no. 46857/06, §§ 27 and 30, 20 May 2010 and *Vincent v. France*, no. 6253/03, § 94-103, 24 October 2006). The Court therefore finds that there was no violation of this provision in the present case.

II. THE REMAINING COMPLAINTS

126. The applicant also complained under Article 5 §§ 1 and 3 of the Convention that his pre-trial detention was unlawful and unreasonably long. The provisions in question read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. 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 ...."

127. However, pursuant to Article 35 of the Convention:

> "1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken ...
>
> (...)
>
> 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

128. The Court notes that the decision to remand the applicant in custody was delivered by the Szczytno District Court on 19 June 2002 and the applicant's appeal against that decision was handed down by the Olsztyn Regional Court on 12 July 2002 (see paragraphs 7 and 10 above). There was no other possibility, under the applicable domestic law, to challenge the detention order in question.

Moreover, the applicant's detention on remand, within the meaning of Article 5 § 3 of the Convention, came to an end on 31 October 2002 when he was convicted by the Szczytno District Court (see paragraph 16 above).

129. In view of the fact that the applicant lodged his application with the Court on 2 May 2003, the above-mentioned Article 5 complaints have been

introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

130. Lastly, the applicant complained under Article 6 § 1 of the Convention about the outcome of the criminal proceedings against him and claimed that they were unfair. The relevant part of the provision invoked reads the following:

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

131. However, pursuant to Article 35 § 1 of the Convention:

> " The Court may only deal with the matter after all domestic remedies have been exhausted ..."

132. It is noted that the applicant failed to lodge a cassation appeal against the Olsztyn Regional Court's judgment of 19 February 2003. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 3 admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 12 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early	Ineta Ziemele
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judge I. Ziemele and Judge Z. Kalaydjieva is annexed to this judgment.

I.Z.
T.L.E.

JOINT DISSENTING OPINION OF JUDGES ZIEMELE AND KALAYDJIEVA

1. We respectfully disagree with the majority which found no violation of Article 3 in this case. We note that the applicant formulated two complaints under Article 3. The first concerned his disability and special needs since he was unable to carry out many of his daily or routine tasks and had to seek help from his fellow inmates. Secondly, he complained about the protracted process of providing him with forearm prostheses (see paragraphs 92-93 of the judgment). We can accept that the authorities assisted the applicant and obtained the necessary prostheses after some delay (see paragraphs 124-125). However, we do not agree with the majority view that the arrangements put in place by the prison authorities to assist the applicant in attending to his daily needs were both adequate and made in time to avoid a lasting situation of questionable compatibility with the requirements of Article 3 (compare and contrast with *Todorov v. Bulgaria* (dec.), no. 8321/11, 12 February 2013).

2. In this regard we would like to reiterate the main principles of the Court's case-law. More generally, the Court has stated as follows: "[Article 3] nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and method of execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; in addition, besides the health of prisoners, their well-being also has to be adequately secured, given the practical demands of imprisonment (see *Kudła*, cited above, § 94)" (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In the case of *Farbtuhs v. Latvia* (no. 4672/02, 2 December 2004), the Court noted that the prison authorities had permitted the family members to stay with the detainee for twenty-four hours at a time and that this took place on a regular basis. In addition to the family taking care of the applicant, who had a physical disability, he was assisted during working hours by the medical personnel and outside working hours was helped by his co-detainees on a voluntary basis. In that case, the Court found that such a solution was not acceptable. The Court stated that it doubted "the appropriateness of such a solution, leaving as it did the bulk of responsibility for a man with such a severe disability in the hands of unqualified prisoners, even if only for a limited period. It is true that the applicant did not report having suffered any incident or particular difficulty as a result of the impugned situation; he merely stated that the prisoners in

question sometimes ‘refused to cooperate’, without mentioning any specific case in which they had refused. However, the anxiety and unease which such a severely disabled person could be expected to feel, knowing that he would receive no professional assistance in the event of an emergency, in themselves raise a serious issue from the standpoint of Article 3 of the Convention” (see *Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004).

3. In assessing the minimum level of severity of treatment, the Court has always taken into account the relative differences in individual circumstances – depending on the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. We would stress again that, according to medical experts, the condition of the applicant in the present case required permanent assistance. The fact that the applicant had to rely on fellow inmates for assistance in meeting his daily personal needs in itself raises an issue as to whether the manner and method of execution of the punishment measures were appropriate to his disabled condition or subjected him to further distress, hardship or humiliation of an intensity exceeding the unavoidable level of suffering inherent in detention. In our view this issue was insufficiently examined.

4. The majority, despite not having in its possession any precise information as to the functioning of the system of inmate assistance to the applicant, still chose to accept that the existence of such a system was adequate from the point of view of Article 3. No distinction was subsequently made between the facts of this case and those of *Farbtuhs v. Latvia*. We consider that the Chamber departed from the established case-law without even providing a reason.