



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

FOURTH SECTION

**CASE OF MISZKURKA v. POLAND**

*(Application no. 39437/03)*

JUDGMENT

STRASBOURG

4 May 2006

**FINAL**

*04/08/2006*

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 Miskurka v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 4 April 2006,

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

## PROCEDURE

1. The case originated in an application (no. 39437/03) 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 Cezary Miskurka (“the applicant”), on 25 November 2003.

2. The applicant was represented by Mr M. Kalinowski, a lawyer practising in Lublin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz, of the Ministry of Foreign Affairs.

3. On 17 March 2005 the Court decided to communicate the complaint concerning the excessive length of the applicant’s detention on remand to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Lublin, Poland.

5. On 5 September 1999 the applicant was arrested on charges of illegal possession of weapons.

6. On 7 September 1999 the Lublin District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand until 5 December 1999.

The court considered that existence of strong evidence against him and the gravity of the charges justified his detention. It also found that the circumstances of the case had not been fully investigated and there was the risk that the applicant would attempt to obstruct the proceedings.

7. The Lublin Regional Court (*Sąd Okręgowy*) upheld the first-instance decision on 14 October 1999.

8. On 30 November 1999 the Lublin Regional Court prolonged the applicant's detention until 5 March 2000. It considered that the original grounds given for keeping him in custody were still valid and referred to the complexity of the case.

9. On 1 March 2000 the Lublin Court of Appeal extended the applicant's detention until 5 June 2000. The court considered that the applicant was suspected of having committed several serious offences (procurement, obstructing the course of criminal proceedings, illegal possession of weapons; he was also a member of an organised crime gang) and there was substantial evidence against him. Since he had attempted to threaten witnesses, his detention was necessary to ensure the proper course of the proceedings.

10. The applicant's detention was subsequently prolonged by the Lublin Regional Court on 31 May 2000.

11. On 31 August 2000 the Supreme Court (*Sąd Najwyższy*) extended the applicant's detention until 5 December 2000. It found that the reasons previously given for holding him in custody were still valid.

12. During the course of the investigation, the applicant lodged several unsuccessful appeals against prolongation of his detention with the Lublin Regional Court and the Supreme Court.

13. On 27 December 2000 the Lublin Regional Prosecutor (*Prokurator Okręgowy*) filed a bill of indictment against the applicant and seven other co-defendants with the Lublin Regional Court. He charged him with procurement, obstructing the course of criminal proceedings, illegal possession of weapons and participation in an organised crime gang.

14. The Lublin Regional Court prolonged the applicant's detention on 28 December 2000 and on 12 June 2001.

15. The Lublin Court of Appeal dismissed the applicant's application for release on 30 January 2001.

16. The trial started on 14 September 2001. The Regional Court held 16 hearings.

17. The applicant's detention was subsequently prolonged 3 times by the Court of Appeal, at the Regional Court's request: on 11 July 2001 and 21 November 2001, 13 February and 22 May 2002 for the same reasons as before.

18. His appeals against those decisions were dismissed.

19. On 27 June 2002 the Lublin Regional Court convicted the applicant as charged and sentenced him to 8 years' imprisonment.

20. During the proceedings before the appellate court the applicant remained in custody.

21. On 25 February 2003 the Lublin Court of Appeal quashed the first-instance judgment and remitted the case.

22. On 18 March 2003 the Lublin Regional Court ordered that the applicant remain in custody until 18 June 2003. The Court of Appeal upheld that decision on 9 April 2003. It found that the applicant's detention was justified by the severity of the anticipated sentence.

23. The applicant's detention was subsequently prolonged by the Regional Court on 17 June and 9 September 2003.

24. On 14 November 2003 the Regional Court extended the applicant's detention until 31 January 2004.

25. On 3 December 2003 the Lublin Court of Appeal quashed that decision and released the applicant from detention on bail of PLN 40,000 (approx. EUR 10,000). The court considered that the applicant had been detained for a very long period and that the interests of the trial did not justify keeping him in detention.

26. The applicant was released from custody on 5 December 2003.

27. On 30 December 2004 the Lublin Regional Court convicted the applicant as charged and sentenced him to 6 years' imprisonment.

28. Following the applicant's appeal, the proceedings are pending before an appellate court.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition to leave the country (*zakaz opuszczania kraju*).

30. Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

"Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing another, serious offence; they may be imposed only if evidence gathered shows a significant probability that an accused has committed an offence."

31. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

"1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a justified fear that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least 3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

32. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

"1. Detention on remand shall not be imposed if another preventive measure is sufficient."

33. Article 259, in its relevant part, reads:

"1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family."

34. The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

35. Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

"1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged

preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

36. On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested with the court of appeal within whose jurisdiction the offence in question has been committed.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

37. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention was excessive. Article 5 § 3 reads as follows:

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

#### A. Admissibility

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

#### B. Merits

##### *1. Period to be taken into consideration*

39. The Court observes that the applicant’s detention lasted from 5 September 1999 to 27 June 2002 (when he was convicted for the first time) and from 25 February 2003 (when the first-instance judgment was quashed) to his second conviction on 5 December 2003. The overall period of the applicant’s detention amounts therefore to 3 years and 7 months.

## *2. The reasonableness of the length of detention*

### **(a) The parties' arguments**

40. The Government maintained that the length of the applicant's detention was not excessive. In their opinion, there had been valid reasons for holding him in custody for the entire period in question. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of charges and severe penalty. There was also a serious risk of the applicant's attempting to put pressure on witnesses, since he had attempted to do it before his arrest.

41. The Government argued that the applicant's detention had been subject to a frequent review by the domestic courts. All decisions concerning his custody were given detailed reasons. The courts had examined his applications for release thoroughly and with regard for the applicant's rights guaranteed under Article 5 § 3.

42. The Government stressed that the case was exceptionally complex but the authorities showed due diligence while dealing with it.

43. In conclusion, they maintained that there had been no breach of Article 5 § 3.

44. The applicant maintained that the period of 3 years and 7 months he had spent in custody was not compatible with the "reasonable time" requirement. He argued that the authorities had failed to give valid reasons for holding him in custody for the relevant period.

45. He contested the Government's argument that his case was treated with due diligence. The ground relied on by the courts, namely the reasonable suspicion that he had committed the impugned offence, had not been based on any concrete, true circumstance. He maintained that his applications for release had never been seriously considered by the courts.

46. The applicant concluded that there had been a breach of Article 5 § 3.

### **(b) The Court's assessment**

#### *(i) Principles established under the Court's case-law*

47. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

48. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

49. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, among other authorities, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) *Application of the principles to the circumstances of the present case*

50. The Court notes that the domestic courts in prolonging the applicant’s detention relied in particular on the reasonable suspicion that he had committed the offence with which he had been charged, its serious nature and the length of a sentence which could be imposed on him. However, the Court has repeatedly held that these grounds cannot by themselves serve to justify long periods of detention on remand (see, among other authorities, *Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001).

51. Furthermore, the judicial authorities held that there was the danger that the applicant, if released, might induce witnesses to give false testimonies. They referred to the fact that the applicant, before his arrest, had attempted to threaten witnesses. The Court agrees that the applicant’s attempt to obstruct justice justified keeping him in custody at the initial stages of the proceedings. However, the Court considers that this ground gradually lost its relevance, as the trial proceeded and the witnesses were interviewed. Moreover, given the absence of any further attempt on the part of the applicant to induce witnesses or to obstruct the course of the proceedings in any other way, it is difficult to accept that the single attempt of collusion before his arrest justified keeping him in custody for the entire period of 3 years and 7 months.

52. The Court cannot but note that the Lublin Court of Appeal eventually released the applicant from detention on 3 December 2003, reasoning that the interests of the trial did not justify keeping him in detention and stressing that he had been detained for a very long period. Before that decision, the authorities had not deliberated on the possibility of imposing on the applicant measures other than detention expressly foreseen

by Polish law to secure the proper conduct of criminal proceedings (see paragraphs 29-32 above).

53. In that context, the Court would reiterate that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see the *Jabłoński v Poland* judgment cited above, § 83).

54. In the circumstances, the Court concludes that the grounds stated in the impugned decisions were not sufficient to justify the applicant’s being kept in detention for the period of 3 years and 7 months.

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

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

56. The applicant alleged a breach of Article 6 § 1 in that he did not have a “fair trial”. He alleged that the courts committed errors of fact and law when dealing with his case.

57. However, the Court notes that the proceedings in question are still pending following the applicant’s appeal against the first-instance judgment, therefore, this complaint is premature.

58. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant maintained that he suffered non-pecuniary damage due to the protracted length of his detention. He submitted that even though he suffered pecuniary damage as well, he was not able to calculate it. He asked the Court to award him just satisfaction on the basis of its case-law.

61. The Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction. In the alternative, they invited the

Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

62. The Court does not discern any causal link between the violation found and the pecuniary damage; it therefore rejects this claim. On the other hand, the Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

### **B. Costs and expenses**

63. The applicant submitted that he was not able to provide any documents which would confirm the costs and expenses incurred during the proceedings.

64. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court finds there is no justification for making any award to the applicant under that head.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint concerning the excessive length of detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the

national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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 4 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President