



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

FOURTH SECTION

**CASE OF LADENT v. POLAND**

*(Application no. 11036/03)*

JUDGMENT

STRASBOURG

18 March 2008

**FINAL**

*18/06/2008*

*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 Ladent v. Poland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Stanislav Pavlovski,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 11036/03) 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 French national, Mr Franck Ladent (“the applicant”), on 24 February 2003.

2. The applicant, who had been granted legal aid, was represented by Mr L. Hincker, a lawyer practising in Strasbourg. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been deprived of his liberty in breach of Article 5 § 1 of the Convention.

4. On 4 July 2006 the Court decided to give notice of the application 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.

5. The French Government were invited to intervene in the proceedings (Article 36 § 1 of the Convention). However, by a letter of 10 October 2006, they informed the Registry that they did not wish to exercise their right to intervene.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and lives in Ferney-Voltaire, France.

7. On an unspecified date he arrived in Poland. He married K.P., a Polish national, on 15 March 2001. They initially lived in Kraków, but on 3 July 2001 they moved to France. Their two children were born in September 2001 and October 2002 respectively. The applicant is an artist and runs a small business in France which provides the only support for the family.

8. On 21 March 2001 a certain B.M., an administrator of the building in which the applicant's wife had a flat, brought a private prosecution against the applicant for slander (*zniewaga*) under Article 216 § 1 of the Criminal Code. He alleged that the applicant had addressed him in obscene language in Polish. Subsequently, the private prosecution proceedings were commenced in the Kraków–Śródmieście District Court.

9. It appears that following the applicant's departure for France the court sent him summonses in connection with the private prosecution but received no response.

10. On 15 July 2002 the District Court ordered that the applicant be remanded in custody for a period of three months. It further ordered that a wanted notice (*list gończy*) be issued with a view to locating and detaining him. It invoked, *inter alia*, Articles 258 § 1(1) and 259 § 4 of the Code of Criminal Procedure (hereinafter “the CCP”).

The District Court held as follows:

“The accused Franck Ladent has no permanent abode in Poland, [and] does not reside in any place known to the court, and is thus obstructing the proper conduct of the proceedings in the present case and the delivery of a proper judgment within a reasonable time. The need to issue a detention order in respect of the accused is required to secure the proper conduct of the proceedings.

Given that the accused Franck Ladent is evading justice he should be sought by means of a wanted notice.”

The court ordered the police to execute that decision and to serve a copy of it on the applicant immediately after his arrest and to inform him that he could appeal. The information that a wanted notice had been issued in respect of the applicant was subsequently entered in a central criminal register.

11. On 8 October 2002 the District Court stayed the proceedings against the applicant on the ground that his whereabouts were unknown.

12. At the end of 2002 the applicant and his family went on holiday to Kraków. At an unspecified time on the evening of 3 January 2003 they arrived at the Słubice border check-point on their journey back to France by car. During a routine passport check the applicant was asked to get out of his car by the border guard officers.

13. The applicant was arrested at 8.15 p.m. on the basis of the detention order and the wanted notice issued on 15 July 2002. He was questioned by the officers but could not understand anything they said and refused to sign any documents. In his submissions to the European Court, he said that various requests he made through his wife, such as to be allowed to contact the French Embassy or his family and to be provided with an interpreter or a lawyer, were refused. After about two hours he was informed that he was being arrested but was not told why. He was detained at the Ślubice Border Guard detention centre.

14. While the applicant was being questioned his wife and their two children, the first aged 3 and the second 16 months at the time, had to stay in the car with the engine on as the temperature outside was -10°C.

15. On 6 January 2003 the applicant's wife engaged counsel to represent the applicant.

16. On 7 January 2003 the Director of the Międzyrzecz Detention Centre notified the Kraków-Śródmieście District Court that the applicant had been transferred there and had been detained on the basis of the detention order of 15 July 2002.

17. On 9 January 2003 the applicant's counsel filed an application with the Kraków-Śródmieście District Court for the applicant's release and requested that his detention be replaced by other, less restrictive, preventive measures. She also appealed against the detention order issued on 15 July 2002.

18. She submitted that the applicant was a French national who permanently resided in France and that he and his wife had left Poland on 3 July 2001. Following the applicant's departure the District Court had sent summonses for the applicant to his wife's address and to another address where the applicant had never lived with the result that the applicant had not known about the criminal proceedings against him and had not been served with the private bill of indictment. Nor had he been informed of his rights and obligations as an accused.

19. Counsel further submitted that the District Court had erroneously found that there were reasonable grounds for suspicion that the applicant had slandered B.M. In any event, the alleged offence only carried a fine or a penalty of restriction of liberty (such as a community service order) but not a custodial sentence. Lastly, counsel referred to the very difficult situation of the applicant's family, who were entirely dependent on him.

20. On 10 January 2003 the Kraków-Śródmieście District Court resumed the private prosecution proceedings against the applicant, noting that his abode had been established. On the same date it quashed the detention order of 15 July 2002 and replaced it with a ban on leaving the country and ordered the applicant to surrender his passport.

The District Court held as follows:

“The accused Franck Ladent was detained on remand on the basis of a detention order issued by this court. Counsel for the accused requested the court to replace the preventive measure imposed on him with a non-custodial one. Counsel in her application argued that the evidence obtained in the case had not sufficiently justified the reasonable suspicion that the applicant had committed slander; in addition, she submitted that the applicant had not been evading justice and that his failure to appear before the court had not been intentional.

The court has found the arguments raised by counsel to be compelling.

In these circumstances, in the court's view the detention on remand should be replaced with other measures, namely a ban on leaving the country together with seizure of his passport. That measure will adequately secure the proper conduct of the proceedings...”.

21. The District Court further ordered that the private bill of indictment, the decision to release the applicant and the summons to appear before the court be translated into French and served on the applicant and that a copy of its decision be served on the Międzyrzecz Detention Centre's director together with an order to release the applicant.

22. On 10 January 2003 (a Friday) the District Court clerk sent by facsimile the court order to release the applicant to the Międzyrzecz Detention Centre. However, the Detention Centre refused to accept the facsimile and informed the court registry that it required original documents before it could release the applicant. Consequently, on the same day the District Court ordered the dispatch of the relevant documents by courier service.

23. The applicant was released from detention in the morning of 13 January 2003 (a Monday). Upon his release he received copies of the three documents translated into French. The applicant submitted that it was only then that he learnt for the first time that he had been accused of slandering B.M..

24. On an unspecified date the applicant's counsel requested the District Court to lift the preventive measures imposed on the applicant pursuant to the decision of 10 January 2003 and to replace them with a guarantee of the applicant's appearance given by the President of the Franco-Polish Friendship Society.

25. On 17 January 2003 the Kraków–Śródmieście District Court granted that application. It considered that it was appropriate to quash the preventive measures given that the applicant ran his own business in France and supported his family exclusively from the income he received from it. It further considered that the guarantee offered would secure the applicant's appearance and the proper conduct of the proceedings.

26. It appears that the applicant and his family returned to France on 27 January 2003.

27. On 7 February 2003 a local MP from Kraków, Mr Z. Wassermann wrote a letter to the President of the Kraków Court of Appeal requesting explanations for the applicant's arrest and detention.

28. In a letter dated 28 February 2003, the President of the Court of Appeal informed the MP that the applicant's case had been thoroughly considered and had been placed under the Vice-President of the Kraków Regional Court's administrative supervision. The President stated that the principal error committed by the District Court in respect of the applicant's detention order was the unfounded assumption that the applicant had been evading justice and maliciously failing to comply with the court summons in a case in which he had not been previously heard and in which he had not been notified of his obligations as an accused pursuant to Article 75 of the CCP, or served with a private bill of indictment (Article 139 § 2 of the CCP). The President further noted that the orders to remand the applicant in custody and to issue a wanted notice had been based on that erroneous premise. Lastly, he stated that the lessons to be drawn from the applicant's case would be used for training purposes.

29. On 21 March 2003 the MP transmitted a copy of the President of the Court of Appeal's reply to the applicant's wife. He advised the applicant and his wife that they could seek to institute disciplinary proceedings against the judge who had issued the detention order and criminal proceedings for abuse of power. He further advised them that they could seek compensation in the civil courts.

30. On 5 October 2004 the Kraków-Śródmieście District Court delivered judgment and acquitted the applicant. On 10 January 2005 the Kraków Regional Court upheld the first-instance judgment.

## II. RELEVANT DOMESTIC LAW

### A. Provisions concerning arrest

Article 244 of the Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, stipulates that everyone who is arrested shall be immediately informed of the reasons for his arrest and of his rights.

Article 246 provides that everyone who is arrested shall be entitled to lodge an appeal with a court challenging the lawfulness of the arrest and the manner of its execution. Such appeals must be promptly transmitted to the competent District Court which is required to examine it speedily. In cases where the District Court has established that the arrest was unlawful or unwarranted, it must order the immediate release of the person concerned.

### B. Provisions concerning detention on remand

The Code of Criminal Procedure 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*), a guarantee by a responsible person (*poręczenie osoby godnej zaufania*), a guarantee by a social entity (*poręczenie społeczne*), a temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and a ban on leaving the country (*zakaz opuszczania kraju*).

Article 249 § 1 sets out the general grounds for the imposition of preventive measures:

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

Article 258 lists the 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 reasonable risk 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 established by the likelihood that a severe penalty will be imposed.”

The Code sets out the extent of the courts' discretion to continue 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.”

Article 259 § 1 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.”

Article 259 § 3 provides:

“Detention on remand shall not be imposed if an offence attracts a penalty of imprisonment not exceeding one year.”

Article 259 § 4 specifies that the rule provided for in Article 259 § 3 is not applicable when the accused attempts to evade justice or persistently fails to comply with summonses or when his identity cannot be established.

### **C. Obligations of the accused**

As worded at the relevant time, Article 75 of the CCP provided that an accused who was not deprived of his liberty was required to appear whenever he received a summons in the course of criminal proceedings. He was also required to inform the authority conducting the proceedings of any change of his abode or of any absence lasting longer than 7 days. The accused was to be informed of these obligations when first questioned.

### **D. Compensation for wrongful detention**

Chapter 58 of the Code of Criminal Procedure, entitled “Compensation for wrongful conviction, detention on remand or arrest”, stipulates that the State is liable for wrongful convictions or for unjustifiably depriving an individual of his liberty in the course of criminal proceedings against him.

Article 552 provides, in so far as relevant:

“1. An accused who, as a result of the reopening of the criminal proceedings against him or of a cassation appeal, has been acquitted or resented under a more lenient substantive provision, shall be entitled to compensation from the State Treasury for the pecuniary and non-pecuniary damage he has suffered in consequence of having served all or part of the sentence initially imposed on him.

...

4. Entitlement to compensation for pecuniary and non-pecuniary damage shall also arise in the event of manifestly wrongful arrest or detention on remand.”

Pursuant to Article 555, an application for compensation for manifestly wrongful detention on remand has to be lodged within one year from the date on which the decision terminating the criminal proceedings in question became final.

Proceedings relating to an application under Article 552 are subsequent to and independent of the original criminal proceedings in which the detention was ordered. The claimant may retrospectively seek a ruling as to whether his detention was justified. He cannot, however, test the lawfulness of his continuing detention on remand and obtain release.

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION AS REGARDS THE APPLICANT'S DEPRIVATION OF LIBERTY BETWEEN 3 JANUARY 2003 AND 10 JANUARY 2003**

31. The applicant complained under Articles 5 § 3 and 7 of the Convention, that he had been deprived of his liberty on the basis of the

invalid detention order issued in the course of private prosecution proceedings against him. He averred that he had never received any summonses or other notification of those proceedings, either while living in Poland or later.

The Court considers that this complaint falls to be examined under Article 5 § 1 of the Convention, the relevant part of which reads, 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...”

## **A. Admissibility**

### *1. Exhaustion of domestic remedies*

32. The Government acknowledged that the applicant had exhausted all the remedies available under Polish law.

### *2. Objection concerning the lack of “victim status”*

33. The Government argued that the applicant could no longer claim to be a victim of the alleged violation of Article 5 § 1 of the Convention. They relied on the President of the Kraków Court of Appeal's letter of 28 February 2003 admitting, in response to a query by a local MP, that the applicant's detention had been unjustified and based on erroneous procedural assumptions. Subsequently, the local MP had written to the applicant's wife to inform her that the applicant could make a claim for damages in respect of his unjustified detention.

34. Having regard to the above, the Government submitted that the domestic authorities had acknowledged a violation of Article 5 § 1 of the Convention in the case and had been ready to afford redress for that breach (*Amuur v. France*, 25 June 1996, *Reports* 1996-III, p. 846, § 36; and *Zarb v. Malta*, no. 16631/04, § 24, 4 July 2006). They emphasised that the applicant had had a real opportunity to obtain redress at the domestic level by claiming damages in respect of his wrongful detention under Article 552 of the CCP.

35. The applicant disagreed. He submitted that the President of the Kraków Court of Appeal had recognised that errors had been committed by the judge who had issued the detention order. However, that statement had been made informally in a letter addressed to a local MP. The applicant argued that the implicit admission of a violation of Article 5 of the Convention by the President of the Kraków Court of Appeal and the fact

that he could seek damages on account of his wrongful detention had not deprived him of his “victim status”.

36. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *Amuur v. France*, cited above, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

37. In the present case, the Court notes that in his letter addressed to a local MP who had requested explanations about the applicant's case, the President of the Court of Appeal informed the MP of a number of procedural errors committed by the court which had led it to issue the detention order and the wanted notice. However, the President's opinion was not addressed to the applicant and had no practical consequences for him. The Court therefore finds that his letter cannot be considered as a decision or measure favourable to the applicant.

38. Even assuming that the letter amounted to an acknowledgment of the unlawfulness of the applicant's deprivation of liberty between 3 January 2003 and 10 January 2003, the Court considers that the second condition – the provision of adequate redress – has not been fulfilled. The President of the Court of Appeal's letter was silent on the question of the redress to be afforded to the applicant.

39. The Government, nevertheless, argued that the applicant could obtain redress by filing a claim for damages in respect of his wrongful detention under Article 552 of the CCP. However, in the earlier part of their observations they admitted that the applicant had exhausted all remedies available under Polish law. The Court cannot but note the contradictory character of the Government's pleadings in this respect. Moreover, their observations are very brief and provide no examples from the national case-law on the effectiveness of the Article 552 remedy in circumstances such as those in the instant case. Consequently, the Court does not consider that the Government have discharged the burden upon them of proving the effectiveness and availability to the applicant of the remedy invoked (see, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

40. Having regard to the foregoing, the Court finds that the applicant can still claim to be a “victim” of a breach of Article 5 § 1 of the Convention as regards the deprivation of his liberty between 3 January 2003 and 10 January 2003.

41. Accordingly, the Government's objection concerning the lack of “victim status” is dismissed.

## *2. Other grounds for declaring this complaint inadmissible*

42. The Court notes that this complaint 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. The parties' submissions*

43. The applicant argued that he had never received any official notification of the private prosecution proceedings that had been brought against him and could not, therefore, be accused of attempting to obstruct them.

44. The Government reiterated that the judicial authorities had already admitted that the applicant's detention had been based on unfounded assumptions. Having regard to the above, they refrained from expressing their position on the alleged violation of Article 5 § 1 of the Convention.

### *2. The Court's assessment*

45. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a “democratic society” within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33). Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-...).

46. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Amuur v. France*, 25 June 1996, § 42, *Reports* 1996-III; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II).

47. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III and *Assanidze*

v. *Georgia*, cited above, § 171). A period of detention is, in principle, “lawful” if it is based on a court order. Even flaws in the detention order do not necessarily render the underlying period of detention unlawful within the meaning of Article 5 § 1 (see, *Benham*, cited above, §§ 42-47; and *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX).

48. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp*, cited above § 37; *Amuur*, cited above, § 50; and *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-... ).

49. In the instant case, the Court will first consider whether the applicant's detention was “lawful” and effected “in accordance with a procedure prescribed by law”, as required by Article 5 § 1 of the Convention. It notes that on 21 March 2001 a private prosecution was brought against the applicant for slander. That offence was punishable by a fine or a penalty of restriction of liberty (such as a community service order). The applicant left Poland on 3 July 2001 with no knowledge of the private prosecution proceedings which had in the meantime been instituted against him before the Kraków–Śródmieście District Court. Subsequently, the District Court attempted to serve summonses on him in connection with the proceedings, but to no avail. On 15 July 2002 the District Court ordered that the applicant be remanded in custody on the ground that he had no permanent abode in Poland and that he had obstructed the proceedings by maliciously failing to act upon the court summonses. It further issued a wanted notice for the applicant. On 3 January 2003, while crossing the Polish border, the applicant was arrested and detained on the basis of the order issued on 15 July 2002.

50. The Court further observes that on 10 January 2003 the Kraków–Śródmieście District Court quashed the detention order of 15 July 2002 and replaced it with non-custodial preventive measures. In the reasons for its decision, it agreed with the submissions of the applicant's counsel that the applicant had not been evading justice and that his failure to appear in response to the summonses had not been intentional. Thus, it would appear that the District Court implied that its detention order of 15 July 2002 had been flawed on that account.

51. Furthermore, the Court attaches considerable importance to the findings of the President of the Kraków Court of Appeal in his letter of 28 February 2003. In that letter, he expressly stated that the District Court

which had issued the detention order and wanted notice had erred in assuming that the applicant had been evading justice and had persistently failed to comply with summonses. The District Court had breached provisions of the Code of Criminal Procedure, in particular, by finding that the applicant had been evading justice even though he had not been served with a private bill of indictment as required by Article 139 § 2 of the CCP as worded at the material time. Furthermore, the applicant had not been able to make representations and had not been instructed about his obligations as an accused pursuant to Article 75 of the CCP.

52. The Court notes that the Government conceded that the Kraków–Śródmieście District Court had erred in finding that the applicant had been evading justice.

53. Against this background, the Court considers that when issuing the order for the applicant's detention the Kraków–Śródmieście District Court failed to apply the relevant domestic legislation correctly (Articles 258 § 1(1) and 259 § 4 of the CCP) as it erroneously found that the applicant had been obstructing the proceedings and evading justice when he had not been duly notified of those proceedings. Having regard to the nature of the flaws in the detention order, the Court finds that the applicant's detention failed to comply with “a procedure prescribed by law”.

54. While the above finding is sufficient to conclude that there has been a breach of Article 5 § 1 of the Convention in this case, the Court nevertheless considers it useful to examine whether the applicant's detention was also free from arbitrariness. As regards the issue of arbitrariness, it notes that the relevant principles were recently restated in the case of *Saadi v. the United Kingdom* (cited above, §§ 67-72). In that case the Grand Chamber held that the notion of arbitrariness in the context of Article 5 varied to a certain extent depending on the type of detention involved. In the context of sub-paragraphs (b), (d) and (e) the notion of arbitrariness also includes an assessment of whether detention was necessary to achieve the stated aim. The detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Witold Litwa*, cited above, § 78; *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, § 51, 8 June 2004; and *Enhorn v. Sweden*, no. 56529/00, § 44, ECHR 2005-I).

55. For the Court, detention pursuant to Article 5 § 1 (c) must equally embody a proportionality requirement. It will be recalled that in the case of *Ambruszkiewicz v. Poland* (no. 38797/03, §§ 29-32, 4 May 2006) the Court applied a proportionality test to detention falling under Article 5 § 1 (c) of the Convention when considering whether the applicant's detention on remand was strictly necessary to ensure his presence at the trial and whether other, less stringent, measures could have been sufficient for that purpose. A

similar test is applied by the Court in the related Article 5 § 3 context of pre-trial detention when examining the relevance and sufficiency of the reasons given by the domestic authorities for maintaining pre-trial detention (see, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-45, ECHR 2006-...).

56. In the present case the Court observes that the applicant was not duly notified of the private prosecution proceedings against him; yet the Kraków-Śródmieście District Court decided to penalise him for allegedly evading justice in circumstances where the applicant was unaware of the proceedings against him. The Court is also troubled by the District Court's conclusion that since the applicant did not have a permanent abode in Poland he was considered to be evading justice. It also notes that the District Court ordered the applicant's detention in a trivial private prosecution case concerning the alleged slander of a building administrator, an offence carrying a penalty of a fine or restriction of liberty (such as a community service order). It is true that the court was empowered under Article 259 § 4 of the CCP to impose such a measure in respect of offences which carried a penalty of less than one year's imprisonment, but subject to the proviso that it established the existence of other circumstances, for example that the accused was evading justice. However, in the present case the District Court's finding in the latter respect was manifestly without foundation. Furthermore, as stated above, the domestic authorities should always consider the application of other, less stringent, measures than detention. In the instant case the Kraków-Śródmieście District Court do not appear to have given consideration to any preventive measures other than detention. Thus, the Court finds that the detention order imposed on the applicant in these circumstances could not be considered a proportionate measure to achieve the stated aim of securing the proper conduct of criminal proceedings, having regard in particular to the petty nature of the offence which he was alleged to have committed (see, *mutatis mutandis*, *Ambruszkiewicz*, cited above, § 32).

57. In conclusion, the Court finds that the applicant's detention was not free from arbitrariness.

58. Having regard to the foregoing, the Court finds that the applicant's detention ensuing from the detention order of 15 July 2002 cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. There has accordingly been a violation of this provision in respect of the deprivation of liberty between 3 January 2003 and 10 January 2003.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

59. The applicant complained under Articles 5 § 2 and 6 § 3 (a) of the Convention that until his release on 13 January 2003 he was not informed in a language which he understood of the reasons for his arrest. The Court

considers that this complaint falls to be examined under Article 5 § 2 of the Convention. This provision reads as follows:

“2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”

### **A. Admissibility**

60. The Court notes that this complaint 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. The parties' submissions*

61. The applicant argued that during his detention he was not informed of the reasons for it in a language which he understood and was not provided with an interpreter. He maintained that he did not understand Polish.

62. The Government submitted that the applicant had been served with the French translation of the bill of indictment against him and other relevant documents on his release on 13 January 2003. They maintained that on his arrest he had been informed about the detention order and wanted notice and the fact that criminal proceedings were pending against him in the Kraków-Śródmieście District Court. That information had most probably been given to him in Polish. The Government said that they could provide no further details concerning the applicant's arrest in the absence of documents in the file. Having regard to the above, they refrained from stating their position on the alleged violation of Article 5 § 2 of the Convention in the instant case.

#### *2. The Court's assessment*

63. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed “promptly” (in French: “*dans le plus court délai*”), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is

to be assessed in each case according to its special features (see, *mutatis mutandis*, *Murray v. the United Kingdom*, 28 October 1994, § 72, Series A no. 300-A, and *Čonka v. Belgium*, no. 51564/99, § 50, ECHR 2002-I).

64. In the present case, it appears that the applicant, a French national, was initially informed of the reasons for his arrest and the charges against him in Polish. The applicant claimed that during his arrest and 10-day detention he was not informed in a language which he understood why he had been deprived of his liberty. The Government did not contest that allegation. Nor did they claim that the relevant information was provided to the applicant promptly. Furthermore, the Kraków-Śródmieście District Court, which decided to release the applicant on 10 January 2003, ordered that the private bill of indictment and other documents be translated into French and served on the applicant upon his release from detention. That circumstance indicates that the authorities were aware that the applicant did not understand Polish.

65. Having regard to the foregoing the Court finds it established that the applicant was not informed promptly and in a language which he understood of the reasons for his arrest and the charges against him until his release on 13 January 2003.

66. There has been accordingly a violation of Article 5 § 2 of the Convention on that account.

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

67. The applicant challenged the validity of the detention order of 15 July 2002 under Article 5 § 3 of the Convention. He further alleged that his requests to be put in contact with an interpreter, a lawyer or the French Embassy had been refused. He also complained under Article 5 § 4 of the Convention that during his 10 day detention he was not allowed to meet the director of the detention centre or to contact his wife with a view to arranging his defence.

The Court considers that the essence of the applicant's complaint concerns the lack of automatic judicial review of his detention and therefore should be examined under Article 5 § 3 of the Convention. This provision provides, in so far as relevant:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power...”

## **A. Admissibility**

68. The Court notes that this complaint 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. The parties' submissions*

69. The applicant submitted that following his arrest on 3 January 2003 he was not brought before a judge as required under Article 5 § 3 of the Convention.

70. The Government admitted that the applicant had been released on 13 January 2003 without being heard in person by the court. However, the applicant's interests in the proceedings regarding his detention had been duly represented by his counsel who had been engaged by his wife. Counsel had been present at the hearing before the Kraków-Śródmieście District Court, which had ordered the applicant's release on 10 January 2003. Having regard to the above, the Government refrained from stating their position on the alleged breach of Article 5 § 3 in the present case.

### *2. The Court's assessment*

71. The Court reiterates that Article 5 § 3 is structurally concerned with two separate matters: the early stages following an arrest when an individual is taken into the power of the authorities and the period pending eventual trial before a criminal court during which the suspect may be detained or released with or without conditions. These two limbs confer distinct rights and are not on their face logically or temporally linked (see *T.W. v. Malta* [GC], no. 25644/94, § 49, 29 April 1999, and *McKay*, cited above, § 31).

72. Turning to the initial stage under the first limb, the Court's case-law establishes that there must be protection of an individual arrested or detained on suspicion of having committed a criminal offence through judicial control. Such control serves to provide effective safeguards against the risk of ill-treatment, which is at its greatest in this early stage of detention, and against the abuse of powers bestowed on law enforcement officers or other authorities for what should be narrowly restricted purposes and exercisable strictly in accordance with prescribed procedures. The judicial control must satisfy the requirements of promptness and be automatic (see, *McKay*, cited above, § 32).

73. Judicial control on the first appearance of an arrested individual must above all be prompt, to allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual liberty. The strict

time constraint imposed by this requirement leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and the risk of impairing the very essence of the right protected by this provision (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 62, Series A no. 145-B, where periods of more than four days in detention without being brought before a judge were found to have been in violation of Article 5 § 3, even in the special context of terrorist investigations).

74. The Court underlines that the review must be automatic and cannot depend on the application of the detained person; in this respect it must be distinguished from Article 5 § 4, which gives a detained person the right to apply for release. The automatic nature of the review is necessary to fulfil the purpose of the paragraph, as a person subjected to ill-treatment might be incapable of lodging an application asking for a judge to review their detention; the same might also be true of other vulnerable categories of arrested person, such as the mentally frail or those ignorant of the language of the judicial officer (see, among others, *Aquilina v. Malta* [GC], no. 25642/94, § 49, ECHR 1999-III; *Niedbala v. Poland*, no. 27915/95, § 50, 4 July 2000; and *McKay*, cited above, § 34).

75. In the instant case, the Court observes that the Kraków–Śródmieście District Court issued an order for the applicant's detention on 15 July 2002 without hearing representations from him. The detention order specified that the applicant was to be informed upon his arrest about his right of appeal. The applicant was arrested on 3 January 2003 and was subsequently detained on the basis of that order. The Court notes that following the applicant's arrest on reasonable suspicion that he had committed an offence there was no automatic judicial control of his detention. In circumstances such as those that obtained in the present case, where the applicant was arrested on the basis of a detention order issued in his absence, the domestic law does not appear to provide for such an initial automatic review and makes it dependent on an application by the detained person. The Court notes that Article 5 § 3 of the Convention does not provide for any possible exceptions from the requirement that a person be brought promptly before a judge or other judicial officer after his or her arrest or detention. To conclude otherwise would run counter to the plain meaning of this provision (see *Harkmann v. Estonia*, no. 2192/03, § 38, 11 July 2006). The Court further observes that the review of the lawfulness of the applicant's detention was initiated by the application made by his counsel on 9 January 2003. The Government's argument that the applicant's interests were duly represented in those judicial proceedings by his counsel is clearly deficient in the light of the explicit wording of Article 5 § 3 (“shall be brought promptly before a judge”).

76. Therefore, there has been a violation of Article 5 § 3 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION AS REGARDS DELAY IN THE APPLICANT'S RELEASE FROM DETENTION

77. The Court raised of its own motion a complaint under Article 5 § 1 of the Convention as regards the delay in executing the order of 10 January 2003 to release the applicant. The relevant part of this provision reads:

“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...”

##### A. Admissibility

78. The Court notes that this complaint 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. The parties' submissions*

79. The applicant submitted that the order for his release dated 10 January 2003 was sent by facsimile on the same day to the Międzyrzecz Detention Centre. However, the detention centre's authorities refused to release him on the basis of the facsimile and required the original documents to be sent. The applicant argued that for the following three days he was unlawfully deprived of his liberty since there was no other decision to justify his detention. Thus, there had been a breach of Article 5 § 1 of the Convention.

80. The Government admitted that the applicant had spent an additional three days in detention and had not been released until 13 January 2003 since the detention centre had refused to release him on the basis of the facsimile copy of the order sent on 10 January 2003. In view of the above, the Government refrained from expressing their position on the alleged violation of Article 5 § 1.

###### *2. The Court's assessment*

81. The Court reiterates that some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical

considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep such delays to a minimum (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311; *Giulia Manzoni v. Italy*, 1 July 1997, § 25 *in fine*, Reports 1997-IV; *K.-F. v. Germany*, 27 November 1997, § 71, Reports 1997-VII; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). The Court reiterates that administrative formalities connected with release cannot justify a delay of more than several hours (see *Labita*, cited above; *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003; and *Gębura v. Poland*, no. 63131/00, § 34, 6 March 2007).

82. In the present case, the Kraków–Śródmieście District Court ordered the applicant's release on 10 January 2003. However, the Międzyrzecz Detention Centre refused to execute that order on the basis of a facsimile copy of the order sent by the court and requested service of the original documents. On 10 January 2003 the District Court ordered the relevant documents to be sent by courier service. The Government have not specified when the documents were received by the detention centre. The applicant was released on 13 January 2003, which is three days after the District Court had ordered his release.

83. The Court must scrutinise complaints of delays in the release of detainees with particular vigilance (see *Nikolov*, cited above, § 80). In its view, the administrative formalities related to the applicant's release could and should have been carried out more swiftly. In this regard, it observes that the paramount importance of the right to liberty imposes on the authorities a duty to remove organisational shortcomings attributable to the State which may occasion unjustified deprivation of liberty (see *Gębura*, cited above, § 35). In the present case, the Court considers that the administrative formalities related to the applicant's release were not kept to a minimum as required by the relevant case-law.

84. There has accordingly been a violation of Article 5 § 1 of the Convention on that account.

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. The applicant also alleged a breach of Article 6 § 2 of the Convention since the criminal proceedings against him had not established his guilt. He lastly complained under Article 8 of the Convention on account of his separation from his family as a result of his detention and the adverse effects it had on his family. He submitted that throughout his period in detention he received no news about his family.

86. The Court notes that the applicant was acquitted of the charge against him. Furthermore, he did not allege that in the course of the proceedings against him there was any judicial decision or statement by a public official which could have infringed his right to be presumed innocent

(see, *Garycki v. Poland*, no. 14348/02, § 66, 6 February 2007). Thus, the Court finds that no issue arises in respect of his complaint under Article 6 § 2 of the Convention.

87. As regards the complaint under Article 8, the Court considers that it is ancillary to and resultant from the main issues arising in the case under Article 5 of the Convention. Having regard to its findings in respect of Article 5, it finds that, regardless of other possible grounds of inadmissibility, the applicant has failed to substantiate his Article 8 complaint beyond what has already been dealt with under Article 5. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed 500 euros (EUR) in respect of pecuniary damage on the ground that following his unlawful detention he was unable to pursue his professional activities in France. He further claimed EUR 10,000 in respect of non-pecuniary damage. In this respect, he argued that he had been unlawfully detained for 10 days without being told the reasons for his detention or being heard by a judge. Additionally, he had not known what had become of his. The applicant's wife claimed EUR 5,000 in respect of non-pecuniary damage.

90. The Government observed that they were not able to comment on the applicant's claims for pecuniary damage since the applicant had failed to produce any documents in respect of his average monthly income in France. They considered the applicant's claims for non-pecuniary damage to be exorbitant and invited the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. Alternatively, they asked the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances. As regards the claim made by the applicant's wife, the Government observed that she was not an applicant in the present case.

91. The Court rejects the applicant's claim for pecuniary damage as unsubstantiated since the applicant has failed to produce any relevant information about his income in France. On the other hand, the Court

considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Having regard to the number and character of the violations found in the present case, in particular the finding that the applicant's deprivation of liberty was unlawful under Article 5 § 1 of the Convention, and making its assessment on an equitable basis, the Court awards the applicant's claim in full. The Court rejects the claim for non-pecuniary damage submitted by the applicant's wife since she was not an applicant in the present case.

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

92. The applicant also claimed EUR 1,196, including VAT, for the costs and expenses incurred before the Court.

93. The Government submitted that any award should be limited to those costs and expenses which were actually and necessarily incurred and were reasonable.

94. 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. The Court notes the applicant was paid EUR 850 in legal aid by the Council of Europe. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the whole sum sought by the applicant (EUR 1,196) for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 346 for costs and expenses.

### **C. Default interest**

95. 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* admissible the complaint under Article 5 § 1 of the Convention concerning the unlawfulness of the applicant's deprivation of liberty between 3 January 2003 and 10 January 2003, the complaint under Article 5 § 2 regarding the failure to inform the applicant of the reasons for his arrest, the complaint under Article 5 § 3 concerning the lack of automatic review of the applicant's detention and the complaint under Article 5 § 1 regarding the delay in releasing the applicant between

10 January 2003 and 13 January 2003, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's deprivation of liberty between 3 January 2003 and 10 January 2003;
3. *Holds* that there has been a violation of Article 5 § 2 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the delay in releasing the applicant between 10 January 2003 and 13 January 2003;
6. *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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 346 (three hundred and forty six euros) in respect of costs and expenses, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President