

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

FOURTH SECTION

CASE OF STETTNER v. POLAND

(Application no. 38510/06)

JUDGMENT

STRASBOURG

24 March 2015

FINAL

24/06/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stettner v. Poland,

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

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 38510/06) 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 Seweryn Stettner ("the applicant"), on 22 September 2006.

2. The applicant was represented by Mr D.R. Swenson from the Rule of Law Institute Foundation in Lublin on a pro bono basis. 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 that his detention on remand amounted to an inhuman and degrading treatment. He further alleged that his detention on remand had not been justified by "relevant and sufficient" grounds and that his appeal against a decision prolonging his detention had not been heard speedily.

4. On 7 September 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Lublin.

6. The applicant was a surgeon at the Hospital no. 4 in Lublin with thirty-two years of practice and who started kidney-transplant operations there. He was also an assistant professor at the Lublin Medical Academy.

7. In 1998 the applicant was diagnosed with sleep apnoea (a sleep disorder characterised by pauses in breathing during sleep) and since then was required to use a respirator when asleep.

8. At 6 a.m. on 1 June 2006 five armed plain-clothes police officers came to the applicant's flat to arrest him. According to the applicant, they were violently knocking on the door. They presented the prosecutor's order for the applicant's arrest.

9. At about 8 a.m. the applicant was brought in handcuffs to his clinic. The event was seen by hospital staff and patients. The police searched the applicant's locker. The applicant's arrest was filmed by one of the police officers. Subsequently, the applicant was brought to the Lublin Regional Police Headquarters where he was questioned. He was informed of the bribe-taking charges against him.

10. After questioning, the applicant was taken to the Lublin Military Hospital for a medical check. Doctor O. issued a certificate that the applicant could be held in detention and recommended the use of the respirator.

11. Subsequently, the applicant was brought to the Lublin-Północ District Prosecutor. The prosecutor charged him with ten counts of accepting material benefits from his patients for medical treatment and/or making the provision of such treatment conditional upon receiving material benefits (Article 228 § 1 and Article 228 § 4 of the Criminal Code respectively). The charges related to the period between 1997 and 2004 and the impugned amounts ranged from 100 to 500 zlotys (approx. 25 to 125 euros).

12. The applicant submitted that on 1 June he had been twice approached by police officers from the anti-corruption unit and once three months later. According to the applicant, they promised him a beneficial treatment if he would confess and name other doctors engaged in corrupt practices. The applicant refused.

13. On 1 June 2006 the Lublin District Court granted the prosecution's request and remanded the applicant in custody until 1 September 2006. It found as follows:

> "The prosecution's request is well-founded and should be granted. The evidence gathered so far in the proceedings points to a strong likelihood – within the meaning of Article 249 § 1 of the Code of Criminal Procedure – that the suspect committed the misdemeanours with which he was charged. [That likelihood] is shown by the depositions of the witnesses who described in an extensive and precise manner the circumstances concerning the acts imputed to the suspect.
>
> The suspect is charged with commission of ten misdemeanours; in respect of each of those misdemeanours he is liable to a maximum sentence of at least 8 years' imprisonment, and thus the need to apply detention on remand in order to ensure the

proper conduct of the proceedings is justified by the severe penalty to which the suspect is liable. The real possibility that such a penalty would be imposed follow from the multitude of acts, their character and circumstances.

The reasons militating against the imposition of detention on remand specified in Article 259 of the Code of Criminal Procedure were not identified. The suspect does not have dependent children, and as regards his state of health, it transpires from his medical examination that he may be held in a "room for arrested persons" possessing a respirator and medication."

14. At about 6 p.m. on 1 June 2006 the applicant was taken to the Lublin Detention Centre. According to the applicant, he was put in a cell of 10 square meters with five other inmates. He was afraid that one of them could unplug his respirator.

15. The applicant appealed against the detention order. He argued that the imposition of detention on remand could seriously jeopardise his life or health as he suffered from sleep apnoea. In the case of a power cut or the unplugging of the respirator by one of the co-detainees the applicant would be exposed to a risk to his life. He also argued that the certificate issued by doctor O. concerned a short period of detention and did not attest that he could be held in detention for a period of three months. Secondly, he submitted that there were no concrete circumstances to substantiate the risk that he would obstruct the proper conduct of the proceedings if non-custodial measures had been applied. On the contrary, the applicant was a surgeon enjoying good professional reputation and a law-abiding citizen.

16. On 20 June 2006 a group of doctors from the hospital no. 4 and the Lublin Medical Academy petitioned the Lublin District Prosecutor to release the applicant. The applicant did not submit any information about the follow-up to this petition.

17. On 22 June 2006 the Lublin Regional Court upheld the detention order of 1 June 2006. It found, *inter alia*, that:

"The suspect is charged, among others, with the offence specified in Article 228 § 4 of the Criminal Code in respect of which he is liable to a sentence exceeding eight years' imprisonment. It should be noted that the circumstances concerning the significant social danger of the suspect's acts, his base motives, the large number of acts and their character justify the supposition that the imposition of a severe penalty of imprisonment within the meaning of Article 258 § 2 of the Code of Criminal Procedure is a real possibility. By "the liability to severe penalty" in the light of this provision it should be understood that the fact of having charged a suspect with a crime or misdemeanour for which he is liable to a statutory maximum sentence of at least eight years' imprisonment gives rise to a legal presumption that the likelihood of a severe sentence being imposed may prompt the suspect to undertake actions obstructing the proper conduct of the proceedings (decision of the Supreme Court of 29 August 2000, case no. II KZ 115/00, unreported).

In the light of the foregoing it is necessary to impose detention on remand in order to secure the proper conduct of the proceedings, and other more lenient preventive measures may have been insufficient at the present stage of the proceedings."

18. As regards the applicant's state of health, the Regional Court found no reasons indicating that holding him in custody would seriously jeopardise his life or health. It noted that the applicant was provided with constant medical care in detention and that he could be detained in an appropriate medical establishment if his condition so required.

19. According to the applicant, on 10 July 2006 he was chained and taken to a hospital for examination of his lungs.

20. On 22 August 2006 the Lublin Regional Medical Chamber issued a guarantee for the applicant and requested the authorities to vary the preventive measure. No further information was provided by the applicant in this respect.

21. On 28 August 2006 the Lublin District Court extended the applicant's detention on remand until 1 December 2006. It found that the investigation could not have been concluded within the period of three months due to "particular circumstances of the case", namely the need to hear evidence from a very large number of witnesses – patients treated by the applicant. On that ground it was justified under Article 263 § 2 of the Code of Criminal Procedure to prolong the applicant's detention beyond the ordinary three-month period.

22. The District Court found that the initial reasons justifying the applicant's detention, namely the reasonable suspicion of having committed the impugned offences and the real risk of a severe sentence being imposed were still valid. It noted that the evidence gathered so far in the case pointed to the reasonable suspicion that the applicant had committed the offences with which he had been charged. Furthermore, the character of the imputed acts, their number and legal classification indicated the severity of the penalty to which he was liable (eight or ten years' imprisonment depending on the charge). In the court's view, the significant social danger of the imputed acts and the manner in which the applicant had operated made the imposition of a severe penalty very likely. According to the court, other, non-custodial, preventive measures would not have been sufficient to ensure the proper conduct of the proceedings since the applicant might unlawfully obstruct the proceedings if released, in particular as the investigation was still ongoing.

23. The District Court held that the applicant's release on health grounds was not called for. According to a medical certificate of 28 August 2006 he suffered from some ailments but could be treated in the prison. In addition, he was provided with medical care.

24. The applicant's lawyer appealed on 29 August 2006. He submitted that the acts imputed to the applicant could not have been considered as criminal offences but as acts of gratitude of customary nature. He underlined that the lower court's finding that the applicant would obstruct the proceedings was entirely groundless and arbitrary supposition. In addition, the applicant's personal circumstances before the commission of

the imputed acts indicated that the penalty to be imposed on him would not have been severe. Furthermore, the lawyer argued that having regard to the applicant's condition (sleep apnoea) his continued detention had serious negative implications for his health. In the alternative, the lawyer requested the court to impose non-custodial preventive measures.

25. On 31 August 2006 the Lublin Regional Court held a hearing to examine the applicant's appeal. The adoption of a decision was postponed at the request of the applicant's lawyer who wished to obtain information from the detention centre whether the applicant had been able to use the respirator and whether his illness might be treated in detention. The applicant was examined by a doctor of the Lublin Remand Centre on 22 September 2006. He was diagnosed, *inter alia*, with hypertension, sleep apnoea, hypertrophic cardiomyopathy (HCM) and cardiac dysrhythmia. The doctor found that the applicant's general condition was relatively good and opined that he could be treated in detention. The medical certificate was received by the court on the same day.

26. The court scheduled the next hearing for 28 September 2006. The hearing was adjourned since the court considered it necessary to obtain a forensic opinion from the Lublin Medical Academy as to whether the applicant's illness could be treated in detention. On 16 October 2006 the Lublin Medical Academy informed the court that the requested opinion could not be prepared because the applicant was its employee. On 17 October the court requested the Poznań Medical Academy to prepare a forensic opinion. The request was repeated on 8 November 2006. The opinion was submitted on 15 November 2006. It stated that the applicant's ailments were of chronic nature and that there was no possibility of a complete recovery. The opinion concluded that the applicant could be treated in detention. In view of his condition, it was necessary to ensure to the applicant frequent medical checks, in particular by a cardiologist and pulmonologist and the regular administration of prescribed drugs. Furthermore, he should be ensured the use of his respirator.

27. The applicant submitted that the opinion of 15 November 2006 had been prepared solely on the basis of his medical records. He was not consulted or examined by doctors from the Poznań Medical Academy.

28. On 23 November 2006 the Lublin Regional Court upheld the District Court's decision. It concurred with the lower court that the basic condition for the applicant's detention on remand, namely the reasonable suspicion of having committed the impugned offences, had been satisfied (Article 249 § 1 of the Code of Criminal Procedure). In addition, the particular condition set out in Article 258 § 2 of the Code of Criminal Procedure (severity of the likely penalty) had also been satisfied. In this respect, the Regional Court invoked the same elements as in its earlier decision which warranted the likelihood of a severe penalty being imposed on the applicant (see paragraph 17 above). It further noted that

Article 258 § 2 of the Code of Criminal Procedure established a presumption to the effect that the likelihood of a severe penalty being imposed might induce the applicant to obstruct the proceedings. In this regard the court stated that:

"The court applying detention on remand is thus under no obligation to indicate that the suspect will surely undertake such actions [aimed at obstruction of the proceedings]."

The court found that the applicant's continued detention on remand was necessary in order to secure the proper conduct of the proceedings and that no other preventive measures would have been sufficient at this stage of the proceedings.

29. The Regional Court further found that the applicant's state of health did not justify his release. It relied on a medical certificate of 22 September 2006 and the expert report of 15 November 2006. It further noted that the applicant could be detained in an appropriate medical establishment had his condition so required.

30. On 29 November 2006 the Lublin District Court prolonged the applicant's detention until 1 March 2007. It further held that the applicant would be released if he put up bail in the amount of PLN 30,000 (approx. EUR 7,500) by 13 December 2006. The court found that it was justified to prolong the applicant's detention beyond the ordinary three-month period. It noted that since August 2006 the prosecutor questioned several dozen of witnesses and as a result he charged the applicant with the commission of at least ten additional offences under Article 228 § 1 and Article 228 § 4 of the Criminal Code. It also noted that the case could develop further since the prosecutor had planned to question many more witnesses.

31. The court found that the reasons justifying the applicant's detention on remand were still valid. The evidence in the case supported the reasonable suspicion against the applicant. Furthermore, the number of charges (at least twenty at the time of the court's decision) and other elements relied on by the court earlier indicated that the applicant was likely to be sentenced to a severe penalty. However, having regard to the fact that the most severe preventive measure had been already applied for nearly six months and that the prosecutor had carried out many investigatory acts, the court found that bail would be a sufficient measure to ensure the proper conduct of the proceedings at that stage.

32. Lastly, relying on the medical certificate of 22 September 2006 and the expert report of 15 November 2006 the court found that the applicant's state of health did militate against his detention on remand.

33. The bail was paid and the applicant was released on 30 November 2006.

34. On 7 December 2006 the Lublin Regional Court dismissed the prosecution's appeal against the decision to release the applicant on bail. It agreed with the lower court that the particular condition set out in Article 258 § 2 of the Code of Criminal Procedure (severity of the likely

penalty) had been satisfied in the applicant's case. However, the fact of this condition being satisfied could not lead to automatic extension of detention on remand. In accordance with Article 257 § 1 of the Code of Criminal Procedure the application of the most severe preventive measure was limited to exceptional cases, namely those where there were grounds to assume that other measures would not have been sufficient to ensure the proper conduct of the proceedings. In the court's view, at the current stage of the proceedings, the application of detention on remand was not appropriate since – in accordance with the principle of proportionality of the application of preventive measures – they should be applied in the manner that was commensurate to the existing risk to the proper conduct of the proceedings. The court found that in the present case there had been no grounds to consider that the applicant would have interfered with the proper conduct of the proceedings because of the severity of the likely penalty. The applicant made his statements in the case, was not previously convicted and had a permanent abode. It was incorrect on the part of the prosecutor to argue that the risk of obstructing the proceedings was justified by the fact that the case could have developed further and the related necessity to question more witnesses. The court emphasised that the severity of the likely penalty alone did not constitute a sufficient ground for application of detention on remand unless it was linked with a substantiated risk that a suspect might take actions obstructing the proper conduct of the proceedings with a view to avoiding the likely penalty. The evidence collected in the case did not provide any grounds for such an assumption. The court concluded that bail would be a sufficient preventive measure in the applicant's case.

35. The applicant submitted that during his detention he had been intimidated by the authorities in various ways. Apparently, his respirator was damaged by the prison guards during searches of the cell. He was made to wait five weeks in pain for a visit to a dentist. He was not provided with a cheap drug against his hypertension. For two weeks he was put in cell no. 60 with five smokers which was very difficult given his condition. Later, he was put in cell no. 38 which had been previously occupied by prisoners suffering from tuberculosis but had not been disinfected. In that cell there was a toilet annex which did not provide any privacy.

36. According to the medical certificate of 1 December 2006 issued by a specialist in lung diseases the symptoms of the applicant's sleep disorder intensified. He recommended that the applicant be treated in a specialised institute in Warsaw.

37. In December 2006 and April 2007 the applicant was hospitalised and diagnosed with ischaemic heart disease. According to the medical certificate of 28 December 2006 the applicant had lost 26 kilograms in weight. Due to his condition following the release the applicant has been unable to practise as a doctor for a certain time.

II. RELEVANT DOMESTIC LAW

A. Medical care in detention facilities

38. The provisions pertaining to medical care in detention facilities and general conditions of detention, and the relevant domestic law and practice are set out in the Court's judgments in the cases of *Kaprykowski v. Poland*, no. 23052/05, §§ 36-39, 3 February 2009; *Sławomir Musiał v. Poland*, no. 28300/06, §§ 48-61, 20 January 2009; and *Orchowski v. Poland*, no. 17885/04, §§ 74-85, 13 October 2009.

B. Preventive measures, including pre-trial detention

39. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines pre-trial detention (*tymczasowe aresztowanie*) 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 on leaving the country (*zakaz opuszczania kraju*).

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."

The provisions on pre-trial detention are based on the precept that pre-trial detention, the most extreme among the preventive measures, should not be imposed if more lenient measures are adequate.

Article 257 reads, in so far as relevant:

> "1. Pre-trial detention shall not be imposed if another preventive measure is sufficient."

Article 258 lists grounds for pre-trial detention. It provides, in so far as relevant:

> "1. Pre-trial detention 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 based on the likelihood that a severe penalty will be imposed."

Article 259 § 1 reads:

"1. If there are no special reasons to the contrary, pre-trial detention 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."

C. The Supreme Court's Resolution of 19 January 2012, no. I KZP 18/11

40. On 19 January 2012 the Supreme Court, sitting as a bench of 7 judges of the Criminal Chamber, adopted Resolution no. I KZP 18/11 in response to a legal question put forward by the Ombudsman. The Ombudsman asked whether the grounds specified in Article 258 § 2 of the CCP constituted independent and sufficient reasons for application of detention on remand, and whether they created a presumption that the suspect may undertake actions obstructing the proper conduct of the proceedings, which meant that no concrete circumstances of interference with the proper conduct of the proceedings had to be indicated.

The Supreme Court held to reply as follows:

"The grounds for application of detention on remand specified in Article 258 § 2 of the CCP constitute autonomous particular grounds for the application of detention on remand when the conditions indicated in Articles 249 § 1 and 257 § 1 of the CCP are satisfied and the negative grounds specified in Article 259 §§ 1-2 are absent."

In the reasons for its Resolution, the Supreme Court held that Article 258 § 2 of the CCP could constitute a particular ground for detention on remand only when other, general conditions of application of this measure, specified in Article 249 § 1 of the CCP as well as the condition set out in Article 257 § 1 of the CCP, the latter indicating the subsidiary nature of detention on remand, had been met. The Supreme Court also held that the regulation at issue complied with the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained that holding him in detention on remand had constituted a danger to his life and health given his sleep disorder and the need to use a respirator. He alleged that he had not been provided with adequate medical care in detention. The applicant was very anxious about the possibility of a power cut in prison or his co-detainee unplugging his respirator which could be fatal. He reported to the authorities the fact that his respirator had been damaged by the prison guards but to no avail. He averred that his detention on remand had resulted in a serious deterioration of his mental and physical health. The applicant did not invoke any provision of the Convention. The Court considers that this complaint falls to be examined under 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. The Government's submissions

42. The Government argued that the applicant had not exhausted domestic remedies with regard to his complaint under Article 3 of the Convention. He failed to bring a civil action for compensation under Articles 23 and 24 read in conjunction with Article 448 of the Civil Code whereby persons deprived of their liberty who had suffered a violation of their personal rights as a result of the conditions of their detention may bring a civil action against the State Treasury. They provided some examples of the domestic practice in this respect.

43. With regard to the merits of the complaint under Article 3, the Government submitted that it was manifestly ill-founded since the inevitable discomfort deriving from detention was minimised by the authorities which had regularly monitored the applicant's health and provided him with requisite medical assistance, including examinations outside prison facility. They argued that the authorities had complied with their obligation to protect the well-being of prisoners in accordance with the standards flowing from the Mouisel v. France judgment. The courts deciding on the applicant's detention on remand based their decisions on the medical certificate of 22 September 2006 and the expert opinion of 15 November 2006 which concluded that the applicant could be treated in detention. Furthermore, the applicant was detained on remand only as long as it was necessary to secure the proper conduct of the criminal proceedings.

44. The applicant was provided with appropriate medical care in detention. He was regularly treated by physicians and consulted by

specialists, in particular a pulmonologist and a psychiatrist. During his detention the applicant could use the respirator at night in accordance with the recommendation of the pulmonologist. The Government stressed that the risk of a power cut in a detention centre was not higher than outside prison and, in addition, the Lublin Detention Centre had a power generator which could be used in the case of a power cut.

B. The applicant's submissions

45. The applicant maintained that he had exhausted all effective remedies that had been available to him at the time of lodging his application.

46. With regard to the merits, the applicant argued that his detention on remand had amounted to a degrading and inhuman treatment. It was uncontested that the applicant suffered from a serious medical condition (sleep apnoea) which required the use of respirator every night. A failure to use the respirator could lead to the applicant's death which was confirmed by medical reports in the case. Despite being aware of this serious medical condition and the subsequent need for treatment, the authorities did not take adequate steps in response. The applicant's respirator was damaged by prison guards during searches of the cell and the applicant was left to repair it by himself. The applicant was in constant fear that one of his fellow inmates in his crowded cell would interfere with the respirator or that a power cut would occur. Referring to *Kaprykowski v. Poland*, the applicant submitted that his reliance on the respirator had put him in a situation that created anxiety and suffering beyond that which normal detention gave rise to.

47. The applicant further argued that the authorities had failed to provide him with adequate medical treatment while in the detention centre. He was made to wait five weeks, in pain, for a visit to a dentist. He was not provided with a cheap drug against his hypertension. For two weeks he was put into a cell with five smokers, a situation that was particularly difficult given his health condition. He was later put into a cell which had been previously occupied by prisoners suffering from tuberculosis but had not been disinfected. The evidence of the lack of appropriate medical treatment was clear from the subsequent significant deterioration of the applicant's health. The applicant relied on the medical certificates of December 2006 and his hospitalisation in connection with ischemic heart disease. The Government did not contest these facts which were not indicative of the appropriate level of medical care afforded to the applicant. The applicant also submitted that the expert opinion on the state of his health of 15 November 2006 had been prepared without his having been examined by the experts. Such practice was contrary to accepted medical standards in Poland.

C. The Court's assessment

48. The Court recalls that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see, among others, *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Sławomir Musiał v. Poland*, no. 28300/06, § 86, 20 January 2009; and *Kaprykowski v. Poland*, no. 23052/05, § 69, 3 February 2009). There are three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, cited above, §§ 40-42; *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006).

49. The Court notes that the applicant's complaint under Article 3 is twofold. Firstly, the applicant complained about his inaptness for detention in view of his sleep disorder and the lack of adequate medical care while in detention. Secondly, the applicant alleged that his health had considerably deteriorated as a result of the inadequate care received in detention. The Court will examine these issues in turn.

50. With regard to the first limb of Article 3 complaint, the Court observes that the applicant regularly raised in his appeals against detention orders the alleged risk to his health stemming from his detention. This issue was examined by the courts deciding on his detention and therefore the applicant was not required to embark on another avenue of civil redress suggested by the Government.

51. With regard to the merits of this complaint, the Court notes that the advisability of the applicant's detention in view of his medical condition was under regular review of the courts. From the first check carried out on the day of his arrest until the last expert opinion issued on 15 November 2006 the doctors and forensic experts repeatedly found that the applicant could be suitably treated in detention provided that he could use his respirator and be administered appropriate drugs. The Court considers that the number of medical opinions obtained in the course of six months of the applicant's detention shows that the courts were attentive to the issue of the

applicant's suitability for detention. In view of these consistent medical findings throughout the whole relevant period, the Court finds that there were no grounds to consider that the applicant's detention was excluded on medical grounds (compare and contrast, *Rokosz v. Poland*, no. 15952/09, §§ 39-40, 27 July 2010; and see *Turzyński v. Poland* (dec.), no. 61254/09, 17 April 2012). In addition, the domestic courts suggested that the applicant could be detained in an appropriate medical establishment had his condition so required (see paragraphs 18 and 29 above).

52. The applicant placed particular emphasis on the risks related to the use of his respirator in the prison environment. It is true that the doctors recommended that the applicant should be able to use his respirator and the Government claimed that he could have used it in accordance with the relevant recommendations. The applicant did not claim that he was prevented from using the respirator. He alleged that his respirator had been damaged by the prison guards; however this allegation remains unsubstantiated by any document or complaint made to the authorities. With regard to the applicant's fear of a power cut in prison or a detainee unplugging the appliance, the Court does not wish to underestimate the applicant's anxiety but does not find it established that the alleged risk went beyond the hardship normally associated with detention. The Court also notes the Government's argument that the detention centre was equipped with a power generator.

53. With regard to the adequacy of medical assistance, the Court notes that the applicant was regularly treated by general practitioners of the remand centre and consulted by specialists, including outside his penitentiary establishment. The applicant made a number of allegations concerning the allegedly inadequate level of medical care such that he had not been provided with a drug against hypertension or that he had been made to wait for a long time to see a dentist. He also alleged that he had been placed in a cell with smokers or in a cell previously occupied by prisoners infected with tuberculosis. However, the Court notes that these assertions are not supported by any evidence in the file and therefore remain unsubstantiated. On the evidence before it, the Court does not find any indication that the medical care provided to the applicant was deficient or below the standard level of health care available to the population generally (see *Nitecki v. Poland* (dec.), no. 65653/01, 21 March 2002; *Kaprykowski*, cited above, § 75; *Michajlov v. Austria* (dec.), no. 13796/09, 27 March 2012, § 35; and *Turzyński*, cited above).

54. In conclusion, the Court finds that this part of the complaint under Article 3 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

55. The applicant further alleged that his health had deteriorated as a result of the deficient care received in detention, this being the second limb of his Article 3 complaint. In support of this assertion the applicant relied on the

medical certificate of 28 December 2006 and his hospitalisations in December 2006 and April 2007.

56. The Court notes that this complaint is related to the alleged deterioration of the applicant's health allegedly resulting from inadequate medical care received in detention and not to any other aspects of his detention such as overcrowding or inadequate living conditions. The alleged deterioration manifested itself following the applicant's release on 30 November 2006. The Government argued that the applicant should have brought a civil action for compensation for material and non-material damage on account of the alleged deterioration of his health.

57. The Court considers that in the circumstances of the applicant's case the civil-law remedies indeed appear suitable. Firstly, the situation giving rise to the alleged breach of Article 3 of the Convention ceased to exist following the applicant's release. Secondly, the applicant argued that his inadequately treated condition had resulted in material damage to his health which had long-lasting effects. He expressly asserted that his current state of health had been caused by the inadequate treatment provided to him in detention. The Court is neither mandated nor in a position to obtain and examine the evidence which would be necessary to rule on the existence of a causal link between the applicant's treatment in detention and his state of health following his release. Conversely, a domestic civil court would be well-suited to examine such an issue and, if appropriate, to award the applicant sufficient redress for the damage suffered by him (see, *mutatis mutandis*, *Nocha v. Poland* (dec.), no. 21116/09, 27 September 2011).

58. Accordingly, the Court allows the Government's objection with regard to this part of Article 3 complaint. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

59. The applicant alleged a breach of Article 5 § 1 (c) and Article 5 § 3 of the Convention in that the authorities had not justified his detention on remand on any relevant ground. In particular, his detention on remand could not be justified by the severity of the penalty to which he was liable in the absence of any concrete circumstances warranting the risk that he would obstruct the proceedings. In this respect he submitted that he could not possibly obstruct the proceedings since the police wanted to interview 2000 of his former patients. He further submitted that the courts refused to take into account his unblemished reputation and the guarantees put forward by the Lublin Medical Chamber and the doctors from his clinic.

60. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention. This provision 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

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

B. Merits

1. Period to be taken into consideration

62. The applicant was arrested on 1 June 2006 and was released on bail on 30 November 2006. The period to be examined is therefore six months.

2. The parties' submissions

(a) The applicant

63. The applicant maintained that his detention on remand had not been based on "relevant and sufficient" grounds. He referred to cases of *Castravet v. Moldova* and *Sarban v. Moldova* where the Court found that the domestic courts' decisions being limited to paraphrasing the reasons for detention on remand provided in the Code of Criminal Procedure could not be considered "relevant and sufficient grounds". The applicant argued that the same situation occurred in his case. In every decision regarding his detention on remand, the domestic courts relied only on one reason for holding the applicant in pre-trial detention, namely a presumption based on Article 258 § 2 of the Code of Criminal Procedure.

64. In the applicant's submission Article 258 § 2 of the CCP was read to allow the domestic courts to hold a suspect in detention on remand in every case where the charges were serious since the court could presume on this basis that the suspect would try to interfere with the investigation. The presumption of release pending trial was overruled in every case where the charges were serious. No individual inquiry into whether this particular defendant would interfere with the investigation was necessary to hold that individual in detention on remand.

65. Poland's application of Article 258 § 2 of the CCP violated Article 5 § 3's protection against unreasonable detention unless it was based on relevant and sufficient reasons. It gave the courts a blanket authority to

hold in detention on remand anyone whom they deemed to be charged with a serious offence. It removed the presumption of innocence and of release for these individuals and instead created a new burden on the applicant to prove a negative, namely that while everyone charged with a serious crime might interfere with the proceedings, he would not. The burden should be on the authorities to show that a particular suspect (defendant) was likely to interfere had he been at liberty. In accordance with the Court's case-law, the mere severity of punishment, while a factor to be considered, could not alone justify detention on remand.

66. This type of power to hold someone in detention without individual justification was precisely the type of power that Article 5 of the Convention was designed to prevent. This was particularly true when the presumption was being used by police officers and prosecutors to coerce a confession or cooperation from a suspect with the threat of a virtually guaranteed detention on remand. This was the situation in the applicant's case. He was approached in the course of the investigation by at least three police officers who had sought his cooperation in their investigations against other doctors and was promised a favourable treatment in exchange for cooperation. Faced with a virtual certainty that they could be held for three or more months in poor conditions due to this presumption, the idea of confession or cooperation in exchange for immediate release was a powerful incentive for suspects (defendants) to cooperate even if against their interests.

67. The applicant argued that the crimes with which he had been charged were not serious enough to justify his detention on remand. The applicant was accused of accepting bribes from his patients in ten counts stretching over an eight-year period in amounts ranging from 100 to 500 zlotys (EUR 25-125), with a total value of less than 1,500 zlotys (EUR 375). The applicant did not want to undermine the seriousness of corruption or its effect on society, but he wished to point out that the Government essentially considered that an allegation of taking less than EUR 50 per year in bribes from patients had been such a serious offence that it justified automatic detention on remand without any allegation, let alone proof, that the applicant would interfere with the investigation. If this crime was enough to guarantee automatic detention on remand then there were few crimes that would have been excluded. Unlike other cases decided by the Court where detention on remand was found to be appropriate this was not a particularly complex case, it did not involve any acts of violence or threats to public safety, it did not involve organised crime or any special circumstances justifying detention on remand.

68. The illegality of the decision to hold the applicant in custody on the basis of an unsubstantiated presumption that he would interfere in the case was even more egregious when balanced against the serious medical condition of the applicant. The threat of serious health consequences or

death certainly outweighed an unproven allegation that the suspect might interfere with the investigation. In addition, the courts ignored the applicant's assertion that he had not and would not interfere with the proceedings as well as his submission that there were no concrete circumstances to substantiate the risk of obstruction. They further ignored the petition from a group of doctors to release the applicant and waited until after six months of detention on remand to finally consider alternatives to detention. The applicant alleged that the domestic courts had not considered at any earlier stages of the proceedings the alternatives to his detention on remand which of itself constituted a breach of Article 5 § 3. In the case of *Kauczor v. Poland* the Court found that the mere presumption of interference was not enough alone to justify continued detention on remand. The situation was no different in the applicant's case. The Government should have known that eliminating the presumption of release by creating the presumption of detention amounted to a violation of Article 5 § 3 unless the Government could provide "relevant and sufficient" justification in this particular case involving this particular defendant.

(b) The Government

69. The Government submitted that the application of detention on remand in the applicant's case had been justified. Both the general prerequisite for the applicant's detention on remand set out in Article 249 § 1 and the particular one provided for in Article 258 § 2 of the Code of Criminal Procedure had been met.

70. The applicant was arrested and charged with ten counts of accepting material benefits from his patients and/or making the provision of medical treatment conditional upon receiving material benefits (Article 228 §§ 1 and 4 of the Criminal Code respectively). In respect of each of those offences he was liable to a maximum sentence of at least eight years' imprisonment. The evidence obtained in the proceedings pointed to a strong likelihood that the applicant had committed the offences with which he was charged. The evidence consisted of statements of witnesses who had described in an extensive and precise manner the circumstances concerning the acts imputed to the applicant.

71. The initial detention order of 1 June 2006 was upheld on appeal. In its decision of 22 June 2006, the Lublin Regional Court noted, *inter alia*, that the significant social danger of the suspect's acts, his base motives, the large number of acts and their character justified the supposition that the imposition of a severe penalty of imprisonment within the meaning of Article 258 § 2 of the Code of Criminal Procedure had been a likely possibility. This provision gave rise to a legal presumption that the likelihood of a severe sentence being imposed may prompt the suspect to undertake actions obstructing the proper conduct of the proceedings. Consequently, it was necessary to impose detention on remand and other,

more lenient, preventive measures would have been insufficient at the relevant stage of the proceedings.

3. The Court's assessment

(a) General principles

72. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, p. 37, § 4, Series A no. 8) the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X).

73. Continued detention therefore 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], cited above, §§ 110-111 with further references).

74. It falls in the first place to the national judicial authorities to ensure that, in a given case, 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 or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

75. The persistence of a 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. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI,

pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

76. In sum, domestic courts are under an obligation to review the continued detention of persons pending trial with a view to ensuring release when circumstances no longer justify continued deprivation of liberty. For at least an initial period, the existence of reasonable suspicion may justify detention but there comes a moment when this is no longer enough. As the question whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features, there is no fixed time-frame applicable to each case (see *McKay*, cited above, § 45).

(b) Application of the principles in the present case

77. The domestic courts relied essentially on two reasons to justify the applicant's detention on remand. Firstly, they invoked the reasonable suspicion against the applicant, the basic condition specified in Article 249 § 2 *in fine*.

78. Secondly, they relied on the severity of the anticipated penalty, the particular condition referred to in Article 258 § 2 of the Code of Criminal Procedure. This provision stipulated, in so far as relevant, that in cases where a defendant was charged with an offence for which he was liable to a statutory maximum sentence of at least 8 years' imprisonment, the imposition of detention on remand with a view to ensuring the proper conduct of the proceedings may be justified by the severity of the anticipated penalty. The Court notes that the reliance on this ground was explicitly linked with the need to ensure the proper conduct of the proceedings and in that sense it was not simply the severity of the anticipated penalty that constituted a ground for imposition or continuation of detention on remand.

79. Furthermore, the domestic courts stated that the severity of the anticipated penalty stemmed from a number of relevant circumstances such as the multitude of acts and their character, their significant social danger and the applicant's base motives. Thus, the Court notes that the domestic courts did not simply invoke the ground of severe penalty but attempted to demonstrate that such penalty was likely to be imposed in the circumstances of the case.

80. In addition, the Lublin Regional Court, relying on a decision of the Supreme Court, also invoked the presumption resulting from Article 258 § 2 of the CCP that the likelihood of a severe sentence being imposed on the applicant may prompt him to undertake actions aimed at obstructing the proceedings. With regard to the said presumption, which was strongly criticised by the applicant, the Court notes that in a number of previous cases against Poland concerning complaints under Article 5 § 3, the domestic courts relied on the impugned presumption. The Court did not

disqualify the presumption as incompatible *per se* with Article 5 § 3, but consistently stated that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see, among others, *Kankowski v. Poland*, no. 10268/03, § 54, 4 October 2005; *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006; *Kąkol v. Poland*, no. 3994/03, § 51, 6 September 2007; *Łaszkiewicz v. Poland*, no. 28481/03, § 58, 15 January 2008; *Kauczor v. Poland*, no. 45219/06, § 46, 3 February 2009; *Jamroży v. Poland*, no. 6093/04, § 38, 15 September 2009; *Jarkiewicz v. Poland*, no. 23623/07, § 53, 6 July 2010; *Finster v. Poland*, no. 24860/08, § 40, 8 February 2011; *Bogusław Krawczak v. Poland*, no. 24205/06, § 85, 31 May 2011; *M.B. v. Poland*, no. 11887/07, § 39, 26 July 2011; *Dochnal v. Poland*, no. 31622/07, § 79, 18 September 2012). In some cases the Court further held that after a certain lapse of time the impugned presumption alone could not justify a person's continued detention and that the court was required to indicate concrete facts supporting the risk of obstruction of the proceedings (see *Szydłowski v. Poland*, no. 1326/04, § 55; *Osiński v. Poland*, no. 13732/03, § 53, *Malikowski v. Poland*, no. 15154/03, § 54, all three of 16 October 2007; *Barbara Górecka v. Poland*, no. 41230/04, § 42, 23 October 2007; *Dzitkowski v. Poland*, no. 35833/03, § 45, 27 November 2007).

81. In the Court's view, Article 258 § 2 of the CCP and the impugned presumption have to be analysed in the overall context of the provisions of the CCP regulating the application of detention on remand. It should be noted that pursuant to Article 249 § 1 of the CCP preventive measures, including detention on remand should be applied with a view to ensuring the proper conduct of the proceedings. The same provision requires that preventive measures could be applied only in the case of reasonable suspicion that an offence was committed. It may not be overlooked that Article 257 § 1 contained an important rule providing that detention on remand was to be applied only if other preventive measures would not have been sufficient.

82. The assessment of the "relevant and sufficient" reasons cannot be detached from the actual length of detention on remand. In the present case, the applicant was held in detention on remand for six months which is not a particularly long period against the background of numerous similar cases against Poland decided by the Court. The Court recalls that Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts); *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004; *Pyrak v. Poland*, no. 54476/00, § 47, 12 February 2008).

83. The decisive element in the Court's assessment of the case is the fact that after nearly six months of applying detention on remand the domestic courts held that the measure was no longer necessary even though they confirmed that the condition set out in Article 258 § 2 of the CCP continued to be satisfied (see paragraphs 31 and 34 above). The Lublin Regional Court referred to the principle set out in Article 257 § 1 of the CCP that detention on remand was the *ultima ratio* of the preventive measures. It clearly stated that the severity of the anticipated penalty alone (i.e. the condition set out in Article 258 § 2 of the CCP) was not a sufficient ground for application of detention on remand unless it was connected with a substantiated risk of obstruction of the proceedings. In the absence of any indications to that effect the Regional Court found no justification for the applicant's continued detention. The Court considers that this approach is compatible with the principles established in its case-law referred to above. In addition, it is consistent with the subsequent Resolution of the Supreme Court on the interpretation of Article 258 § 2 of the CCP (see paragraph 40 above). This approach of the domestic courts indicates, contrary to the applicant's assertion, that there was no blind and automatic application of Article 258 § 2 and of the impugned presumption and that the domestic courts carried out a rigorous review of the circumstances militating for and against the applicant's detention. This is further demonstrated by the fact that in the course of the investigation the applicant was charged with at least ten additional counts of similar offences; yet the courts found that there was no need to prolong his detention on remand. Having regard to the above, the Court cannot agree with the applicant's assertion that the domestic courts' decisions were limited to paraphrasing the reasons for detention provided in the Code of Criminal Procedure, without explaining how they applied in the applicant's case (compare and contrast, *Castravet v. Moldova*, no. 23393/05, § 34, 13 March 2007.

84. The Court notes that the domestic courts considered whether other preventive measures than detention on remand would be sufficient to ensure the proper conduct of the proceedings. In the first two decisions on the applicant's detention, the Lublin District Court answered this question in the negative. In its second decision of 28 August 2006, the district court found that non-custodial measures would have been insufficient given the risk that he might obstruct the proceedings since the investigation was still ongoing. However, in its third decision of 29 November 2006, the district court held that bail would be an adequate measure given the period that the applicant had already spent in custody and the advanced stage of the investigation. With regard to the applicant's allegation that the domestic courts failed to take into account the guarantees put forward by the Lublin Medical Chamber and the doctors of his clinic, the Court notes that on the basis of the case file it is not possible to determine whether those bodies filed relevant applications with the court in accordance with the Code of Criminal

Procedure. In addition, there was no mention of those guarantees in any of the appeals lodged by the applicant against decisions prolonging his detention. The applicant also alleged that in the course of the investigation he had been approached by police officers who offered him favourable treatment in exchange for his cooperation in the investigation against other doctors. However, the Court finds that this allegation remains unsubstantiated.

85. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire period of six months.

86. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings. In this regard, the Court observes that the investigation was of certain complexity, regard being had to the number of witnesses and the related scope of evidentiary proceedings. The Court does not discern any significant periods of inactivity in the investigation. For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with relative expedition.

87. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

88. The applicant complained under Article 5 § 4 about the delay in examination of his appeal against the Lublin District Court's decision of 28 August 2006 prolonging his detention on remand. This provision reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

1. The applicant's submissions

90. The applicant maintained that his appeal had not been examined speedily. He objected to being held responsible for the delay in the examination of his appeal. In his view, the Government did not provide a proper account for the delay at issue. The local doctors were disqualified from giving a report on the applicant's condition since they were associated with him. The applicant alleged that a forensic expert from Poznań had not acted in a timely manner. It took him over two and a half months to prepare a written report on the applicant's condition even though he failed to examine or even speak to the applicant in reporting on his medical condition. This practice violated professional medical standards in Poland.

2. The Government's submissions

91. The Government admitted that under the Court's case-law the acceptable periods for examination of appeals covered by Article 5 § 4 should be counted in days or weeks rather than in months. However, in the applicant's case the first hearing concerning the applicant's appeal against the decision of 28 August 2006 was scheduled immediately after the filing of the appeal. The adoption of a decision on the applicant's appeal was postponed twice at the request of the applicant's lawyer who had pleaded the necessity to obtain additional information on the applicant's health. The Government argued that a certain delay in the examination of the impugned appeal had been justified by the circumstances of the case.

3. The Court's assessment

92. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance, *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

93. The question whether the right to a speedy decision has been respected must – as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII; *Idalov v. Russia* [GC], no. 5826/03, § 154, 22 May 2012), including the complexity of the proceedings, their conduct by the domestic authorities and by the applicant and what was at stake for the latter (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). In certain instances the complexity of medical – or other – issues involved in a determination of whether a person should be detained or released can be

a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements. That does not mean, however, that the complexity of a given dossier – even exceptional – absolves the national authorities from their essential obligation under this provision (see, *mutatis mutandis*, *Baranowski v. Poland* cited above, § 72; *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II; *Jabłoński v. Poland*, no. 33492/96, § 92, 21 December 2000; *Frasik v. Poland*, no. 22933/02, § 63, ECHR 2010 (extracts)).

94. The applicant's appeal against the Lublin District Court's decision of 28 August 2006 extending his detention on remand was examined on 23 November 2006. Accordingly, the period to be taken into consideration under Article 5 § 4 lasted eighty-six days.

95. The Government suggested that the applicant had contributed to the delay in examining his appeal by his two requests to obtain medical evidence concerning the state of his health. The Court acknowledges that the applicant's state of health was no doubt a relevant issue to consider in respect of the prolongation of his detention on remand. It remains to be examined whether the domestic courts acted in this context with swiftness required under Article 5 § 4.

96. The Court observes that on 31 August 2006 the Lublin Regional Court decided to seek an opinion of the doctor of the remand centre where the applicant was held. That opinion was prepared and submitted more than three weeks later, that is on 22 September 2006. On 28 September 2006 the same court decided to obtain a forensic opinion on the applicant's state of health from the Lublin Medical Academy. The court's request was futile because the Lublin Medical Academy could not prepare an opinion on its employee. This request caused another delay in the proceedings lasting nearly three weeks. Then, the court turned to the Poznań Medical Academy and finally obtained a forensic opinion after nearly a month. There was a further delay of eight days between the receipt of the opinion (15 November 2006) and the actual decision of the Regional Court (23 November 2006). This opinion was prepared solely on the basis of the medical dossier of the applicant. The Court is not, therefore, convinced by the Government's argument that the need to obtain medical evidence can explain the overall delay in the examination of the applicant's appeal. Having regard to the strict standards the Court has laid down in its case-law concerning the question of State compliance with the "speediness" requirement of Article 5 § 4 (see, in particular, the *G.B. v. Switzerland*, no. 27426/95, § 33, 30 November 2000; *Rehbock*, cited above; *Sarban v. Moldova*, no. 3456/05, § 120, 4 October 2005; *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Idalov*, cited above, § 157), the Court considers that the Lublin Regional Court failed to decide the lawfulness of the applicant's detention on remand "speedily".

97. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the applicant complained about the fact that on 10 July 2006 he had been allegedly taken for examination to a hospital in chains and about the appalling sanitary conditions in detention. The applicant further alleged a breach of the presumption of innocence in respect of the intimidating manner in which his arrest had been effected. He also complained about the biased coverage of his case in the media. He claimed that the case against him had been politically orchestrated by the police and the prosecuting authorities. The applicant maintained that the police manipulated the witnesses (his former patients) who were all suffering from serious ailments and had problems with their memory. In some cases the witnesses testified about the events which had allegedly taken place as far back as ten years prior to the investigation. The applicant accused the police of making speculative inquiries against him as they apparently heard evidence from 1200 of his former patients.

99. The Court has examined the remaining complaints submitted by the applicants. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 24,000 euros (EUR) in respect of pecuniary damage; this sum corresponded to his average income of EUR 2,000 per month over the period of twelve months. Relying on a number of medical certificates, he maintained that his detention led to a significant deterioration of his health and to a loss of the ability to work in the six months following his release.

102. The applicant also claimed EUR 6,000 in respect of non-pecuniary damage on account of six months of unnecessary detention, the conditions of his detention and the effect of the detention on him and his family. These led to a considerable physical and mental suffering.

103. With regard to the claim for pecuniary damage, the Government argued that it was hypothetical and did not have any causal link with the alleged violations of the Convention. With regard to the claim for non-pecuniary damage, the Government argued that it was excessive. Should the Court establish that there have been violations of Articles 3, 5 § 3 and 5 § 4 of the Convention, the Government invited it to rule that the finding of a violation constituted in itself sufficient just satisfaction. In the alternative, the Government asked the Court to assess the issue of just satisfaction on the basis of its case-law in similar case and with due regard to national economic circumstances.

104. The Court notes that of the three alleged violations of the Convention, the Court has only found a breach of Article 5 § 4. It does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered non-pecuniary damage – such as distress and frustration – which is not sufficiently compensated by the finding of a violation of Article 5 § 4 of the Convention. Having regard to the nature of the breach and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

105. The applicant was represented on a pro bono basis and did not make a claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 5 § 3 and 5 § 4 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *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 2,000 (two thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Guido Raimondi
Deputy Registrar	President