



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

THIRD SECTION

CASE OF PUNZELT v. THE CZECH REPUBLIC

(Application no. 31315/96)

JUDGMENT

STRASBOURG

25 April 2000

FINAL

25/07/2000

In the case of Punzelt v. the Czech Republic,

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

MR J.-P. COSTA, *President*,

MR L. LOUCAIDES,

MR P. KŪRIS,

MRS F. TULKENS,

MR W. FUHRMANN,

MR K. JUNGWIERT,

MRS H.S. GREVE, *judges*,

and MRS S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 May 1999 and 6 April 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (31315/96) against the Czech Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by a German national, Mr Siegfried Punzelt (“the applicant”), on 25 March 1993.

The applicant is represented by Mr C. Pinkerneil, a lawyer practising in Munich. The Government of the Czech Republic are represented by their Agent, Mr E. Slavík.

The German Government, having been informed by the Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 36 § 1 of the Rules of Court), did not indicate any intention of so doing.

The application concerned the applicant’s detention on remand and criminal proceedings brought against him in the Czech Republic.

2. On 3 December 1997 the Commission decided to communicate the application to the respondent Government and the parties exchanged written observations.

3. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. By a decision of 4 May 1999 the Chamber declared admissible the applicant’s complaint under Article 5 § 3 of the Convention that there had been a breach of his right to trial within a reasonable time or to release

pending trial, and his complaint under Article 6 § 1 of the Convention about the length of the criminal proceedings. It declared inadmissible the remainder of the application concerning, *inter alia*, the alleged unfairness of the criminal proceedings and the alleged failure to provide the applicant with adequate medical care during his detention on remand.

On the same day the Chamber decided that it was not necessary to hold a hearing.

6. Subsequently the parties produced a number of documents, either at the President's request or of their own accord.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 5 September 1991 the Munich I Regional Court (*Landgericht*) issued an arrest warrant against the applicant on the ground that he had been accused of fraud and forgery in Germany. The warrant stated that the applicant had previously been convicted of similar offences, that the probationary period of a suspended prison sentence which had been imposed on him had not yet expired, and that the applicant had left Germany for Prague.

8. On 10 December 1992 the Czech authorities took the applicant into custody with a view to his extradition to Germany.

9. On 14 April 1993, while he was detained pending his extradition, the Czech authorities accused the applicant of fraud on the ground that he had issued two uncovered cheques for 891,412 and 682,139 German marks (DEM). On 23 April 1993 the Prague City Court (*Městský soud* - "the City Court") released the applicant from detention pending extradition and remanded him in custody. The decision stated that the applicant had been prosecuted and sentenced for similar offences in the past, that he was a foreign national who had earlier absconded from criminal proceedings in Germany, and that he risked a heavy penalty in the Czech Republic. The City Court therefore considered the applicant's detention necessary under Articles 67 (a) and 68 of the Code of Criminal Procedure.

10. On 26 April 1993 the applicant complained to the Court of Cassation (*Vrchní soud*) about his detention on remand. He contended, in particular, that the criminal court dealing with his case in Germany was prepared to release him on bail and discontinue the proceedings against him, and that the money he had invested in the Czech Republic constituted a safeguard against his absconding. The applicant also referred to health problems he had.

11. On 7 May 1993 the Court of Cassation dismissed the applicant's complaint, referring to the reasons set out in the first-instance decision. Subsequently the following relevant events occurred and decisions were taken in the applicant's case.

A. Decisions extending the applicant's detention on remand

12. On 21 June 1993 the City Court extended the applicant's detention on remand until 23 August 1993. The court noted that the case could not proceed as the Austrian authorities had failed to submit information about the applicant's account in an Austrian bank.

13. On 7 August 1993, at the Prague Public Prosecutor's request, the City Court extended the applicant's detention until 23 October 1993. The City Court noted that the Austrian authorities had not submitted the requested information concerning the applicant's bank account, that this information constituted an important element of the evidence, and that it was also necessary to hear further witnesses for the defence. The court also had regard to the fact that the applicant had communicated with persons outside the prison by means of a radio transmitter which he had unlawfully kept in his cell. It concluded that the applicant's further detention was necessary under Article 67 (b) of the Code of Criminal Procedure as there was a risk that he could influence the witnesses.

14. The applicant lodged a complaint. He maintained that the evidence available proved that he was innocent, and he emphasised his health problems. The complaint was dismissed by the Court of Cassation on 15 September 1993.

15. On 12 April 1995, at the Prosecutor-General's request, the Supreme Court (*Nejvyšší soud*) extended the applicant's detention until 23 August 1995. The Supreme Court held that detention was still necessary under Article 67 (a) and (c) of the Code of Criminal Procedure. It referred to the complexity of the case and the danger of the applicant's absconding and held that his release would jeopardise the criminal proceedings.

16. On 9 August 1995 the Supreme Court extended the applicant's detention until 23 February 1996. It held that the applicant was being prosecuted for serious offences and that his release would frustrate the proceedings because he was a German citizen against whom charges had been brought in Germany. The Supreme Court considered the applicant's detention on remand necessary under Article 67 (a) and (c) of the Code of Criminal Procedure.

17. On 12 February 1996 the Court of Cassation extended the applicant's detention until 30 June 1996. It found no undue delays in the proceedings before the City Court and considered that their length was justified, in particular, by the complexity of the case, the heavy workload of the City Court and on account of the complaint in the interests of the law

which, in the meantime, had been lodged by the Minister of Justice at the request of the applicant (see paragraph 54 below).

18. On 15 February 1996 the applicant challenged the decision of the Court of Cassation. He argued that he had resided in Prague since 1990, that he owned real property in the Czech Republic and that his wife was a Czech national.

19. On 7 March 1996 the Supreme Court rejected the challenge. It found the reasons relied on by the Court of Cassation relevant and sufficient.

20. On 14 May 1996 the Court of Cassation extended the applicant's detention until 30 September 1996. It noted that the case had been submitted to the appellate court on 3 May 1996, and that the first hearing was scheduled for 31 July 1996, that is to say at the court's earliest convenience. The Court of Cassation considered the further detention of the applicant necessary within the meaning of Article 67 (a) of the Code of Criminal Procedure.

21. On 27 May and on 6 June 1996 the applicant lodged a complaint against that decision.

22. On 19 June 1996 the Supreme Court dismissed the complaint. It found the applicant's detention necessary in order to prevent his absconding.

B. The applications for release lodged by the applicant

23. On 18 June 1993 the applicant lodged an application for release pursuant to Article 72 § 2 of the Code of Criminal Procedure. He maintained that his actions did not constitute a criminal offence.

24. On 24 June 1993 the City Court dismissed the application. It considered that the reasons for the applicant's detention on remand, as set out in the earlier decisions, were still relevant. The City Court referred to the applicant's personal situation and held that the security of 1,000,000 Czech korunas (CZK) which the applicant had offered for his release on bail did not represent a sufficient guarantee that he would appear for trial.

25. On 4 August 1993 the Court of Cassation dismissed the applicant's complaint. It excluded the possibility of releasing the applicant on bail at that stage.

26. On 25 October 1993 the applicant again applied for release. He pointed out, in particular, that he had been detained for several months, that all the witnesses in the proceedings against him had been heard and that he was suffering from diabetes. The applicant further stated that he and his family had their permanent residence in Prague and that he did not intend to abscond. He offered a security of CZK 1,000,000.

27. On 12 November 1993 the City Court dismissed the application. It noted that the offence with which the applicant had been charged was punishable with a possible prison sentence of five to twelve years. The court

reiterated that the applicant had absconded from Germany, avoiding other criminal proceedings. It therefore considered his detention necessary within the meaning of Article 67 (a) of the Code of Criminal Procedure.

The City Court pointed out again that in the past the applicant had allegedly been involved in fraudulent transactions in Germany and it concluded that he might commit further similar offences. It therefore considered that the applicant's detention was also necessary under Article 67 (c) of the Code of Criminal Procedure.

Lastly, the City Court held that detained persons were entitled to the same health care as other individuals and that the applicant's state of health was not, as such, a relevant reason for his release.

28. On 22 November 1993 the applicant lodged a complaint against the City Court's decision, for which he submitted reasons on 29 November and 21 December 1993.

29. On 21 December 1993 the Court of Cassation dismissed the complaint. It considered that the applicant's detention was necessary under Article 67 (a) and (c) of the Code of Criminal Procedure. Like the City Court, the Court of Cassation did not consider a security of CZK 1,000,000 to be a sufficient safeguard against the applicant's absconding or committing further offences.

30. On 3 January 1994 the applicant lodged a fresh application for release. On 14 February 1994 he offered the court a security of CZK 15,000,000. The applicant claimed that he and his family resided in Prague, that he was not receiving adequate health care in prison and that the charges against him were unsubstantiated.

31. The City Court dismissed the application on 28 February 1994. It again pointed out that the applicant had absconded from Germany, where he had been indicted for fraudulent activities, and that in the proceedings before the City Court he had been charged with two counts of cheque fraud involving the equivalent of CZK 28,400,000. The court held, with reference to a police report, that the applicant had not formally registered his residence in the Czech Republic. It concluded that he could abscond and commit further offences.

The City Court expressed its readiness to release the applicant on bail for health reasons if he paid a security of CZK 30,000,000. The court noted that, prior to his arrest, the applicant had intended to buy two department stores for CZK 338,856,000 and 236,000,000, and that he had undertaken to pay instalments of CZK 150,000,000 for them.

32. On 4 March 1994 the applicant lodged a complaint for which he submitted reasons on 15 March 1994. He maintained that there was no risk of his absconding and that the actions imputed to him had not given rise to any adverse effects.

33. On 15 April 1994 the Court of Cassation dismissed the applicant's complaint. It noted that the fixing of the amount of security to be paid by a

person who applies for release on bail was within the discretionary power of the courts.

34. On 21 October 1994 the City Court dismissed another application for release lodged by the applicant. On 19 December 1994 the Court of Cassation upheld that decision. The courts noted that the applicant was a German national with numerous contacts abroad, that he had absconded in the past and that his children lived abroad. The courts also noted that the applicant still had at his disposal one of the department stores he had intended to buy, notwithstanding that the available evidence indicated that it did not belong to him. They considered the applicant's age and state of health irrelevant when deciding on his application for release. In the courts' view, the applicant's further detention on remand was necessary under Article 67 (a) and (c) of the Code of Criminal Procedure.

35. On 10 January 1995 the City Court dismissed a further application for release by the applicant. It found that the applicant was under the threat of a heavy prison sentence and that he was a foreign national who had moved to the Czech Republic in order to avoid criminal proceedings against him in Germany. The court noted that the applicant was being prosecuted for fraudulent activities in Germany and was continuing to use one of the department stores in Prague which, according to the first-instance judgment delivered that same day (see paragraph 51 below), he had acquired by fraudulent means.

36. On 15 March 1995 the Court of Cassation dismissed the applicant's complaint against that decision. The Court of Cassation did not consider that the security of CZK 10,000,000 and a written pledge not to abscond offered by the applicant were sufficient guarantees in the particular circumstances of the case.

37. On 22 May 1995 and 22 August 1995 the applicant again applied for release. He offered a security of CZK 10,000,000.

38. The applications were dismissed by the Prague 1 District Court (*Obvodní soud*) on 2 June and 22 August 1995 respectively. On 28 June and on 24 November 1995 respectively the City Court dismissed the applicant's complaints against those decisions. The courts considered the applicant's detention on remand necessary under Article 67 (a) and (c) of the Code of Criminal Procedure. They also noted that, if released, the applicant would have to be redetained pending his extradition to Germany, and that the Czech authorities would then be obliged to return any sums paid by him as security.

39. On 3 and 7 November 1995 the applicant lodged another application for release. It was dismissed by the City Court on 16 January 1996. On 2 May 1996 the applicant lodged a complaint against that decision. The Court of Cassation dismissed it, for reasons similar to those given earlier, on 14 May 1996.

40. On 24 June 1996 the applicant again applied for release. The application was dismissed by the Court of Cassation on 17 July 1996.

C. The criminal proceedings against the applicant

41. On 8 October 1993 the applicant was informed of the outcome of the investigation into his case. He stated that he had no other proposals as regards the evidence to be taken and agreed that the file be transmitted to the Public Prosecutor.

42. On 21 October 1993 the Prague Public Prosecutor's Office indicted the applicant for fraud. The prosecuting authority suggested that the City Court hear ten witnesses and accept further documentary evidence submitted by it.

43. In his submissions of 26 October and 22 November 1993, the applicant requested that the City Court take further evidence.

44. On 5 November 1993 the applicant asked the City Court to hear him, and on 15 February 1994 he requested that a witness be heard.

45. On 18 November 1993, 15 February 1994 and 11 April 1994 the applicant asked the court to obtain expert opinions.

46. On 8 and 9 November 1993 and 21 April 1994 the applicant submitted further evidence to the City Court.

47. On 16 February 1994 the applicant complained to the Vice-President of the City Court about delays in the proceedings.

48. On 26 May 1994 the City Court scheduled a hearing for 28 and 29 June 1994. The hearing took place and the case was adjourned until 22 August 1994 as the City Court considered it necessary to hear further witnesses and to take new evidence. The proceedings were adjourned for similar reasons on 9 September and 21 October 1994.

49. On 22 November 1994 the applicant challenged the City Court judges dealing with his case. He also complained that the proceedings had lasted an unreasonably long time.

50. On 23 November 1994 the City Court dismissed the applicant's request for exclusion of its judges. On 19 December 1994 the Court of Cassation quashed that decision as the relevant law had not been specified correctly. It agreed, however, with the reasons given on the merits of the issue.

51. On 10 January 1995 the City Court convicted the applicant of fraud and sentenced him to eight years' imprisonment and to expulsion from the Czech Republic.

52. The applicant appealed on 17 February 1995.

53. On 15 March 1995 the Court of Cassation quashed the conviction. It held that the City Court had not established or considered all the relevant facts of the case, that it had applied the law incorrectly and that its judgment was unclear. The Court of Cassation concluded that extensive further

evidence should be taken, and sent the case back to the Prague Public Prosecutor for further investigation.

54. On 17 July 1995, at the request of the applicant, the Minister of Justice lodged a complaint in the interests of the law with the Supreme Court.

55. On 14 September 1995 the Supreme Court quashed the Court of Cassation's decision of 15 March 1995 to the extent that the case was to be sent back to the Public Prosecutor. The Supreme Court shared the Court of Cassation's view that the trial court had not established all the relevant facts and that its judgment was unclear. It found, however, that the Court of Cassation had not sufficiently specified the shortcomings in the trial court's judgment. The Supreme Court pointed in detail to the factual and legal errors and other shortcomings in the City Court's judgment. It ordered the latter to supplement the evidence in accordance with its instructions and to adjudicate on the matter again.

56. On 16 January 1996 the City Court delivered a new judgment in which it again convicted the applicant of fraud. Having regard to the applicant's age and state of health, the City Court reduced the prison sentence to five years. It also ordered the applicant's deportation from the Czech Republic.

57. In its judgment the City Court found that the applicant had caused damage of DEM 1,573,551 in that, in the context of negotiations for the sale of two department stores in Prague, one of which he had actually acquired and used until 10 January 1995, he had deposited security which could not be recovered by the vendor in accordance with the relevant provisions of the contract.

58. The applicant appealed, maintaining that he had committed no offence.

59. On 31 July 1996 the Court of Cassation upheld the applicant's conviction. Having regard to his age and state of health, it reduced the prison sentence to three and a half years. The period of the applicant's detention on remand was deducted from the sentence.

D. Proceedings in the Constitutional Court and other relevant facts

60. On 11 May 1993 the Minister of Justice granted a request lodged by the German authorities for the applicant's extradition. The Minister further decided to postpone the extradition until the end of the criminal proceedings against the applicant in the Czech Republic.

61. On 25 November 1994 the applicant lodged a constitutional complaint against the City Court's decision of 21 October 1994 concerning his application for release (see paragraph 34 above). The Constitutional Court (*Ústavní soud*) rejected the complaint on 25 January 1995.

62. On 1 April 1996 the applicant lodged another constitutional complaint, in which he challenged the Supreme Court's decision of 7 March 1996 in conjunction with the Court of Cassation's decision of 12 February 1996 concerning an extension of his detention on remand (see paragraphs 17 and 19 above).

63. On 15 October 1996 the Constitutional Court rejected that constitutional complaint.

II. RELEVANT DOMESTIC LAW

64. Until 31 December 1993 the relevant provisions of the Code of Criminal Procedure read as follows:

Article 67

“An accused person may be remanded in custody only if there exist specific grounds for believing that he or she

(a) will abscond in order to avoid prosecution or punishment, in particular if his or her identity cannot be immediately established, if he or she has no permanent residence or if he or she is liable to a heavy penalty;

(b) will try to influence the witnesses or co-accused or otherwise frustrate the investigation into the facts which are of importance for the conduct of the proceedings; or

(c) will carry on the criminal activity for which he or she is prosecuted, will accomplish an offence attempted by him or her or will commit an offence which he or she was preparing or threatening to commit.”

Article 68 provides that only an accused person may be remanded in custody. The relevant decision must be made by a court or, at the pre-trial stage, by a judge upon a proposal lodged by the Public Prosecutor, and it must be justified by the particular circumstances of the case.

Under Article 72 § 2, an accused person is entitled to apply for release at any time. Decisions on such applications are to be delivered without delay. If refused, an application for release may be re-submitted fourteen days after the relevant decision becomes final, unless a fresh application is based on different reasons.

Pursuant to Article 73a §§ 1 and 2, a court is entitled to release on bail persons detained on remand for reasons set out in Article 67 (a) or (c) of the Code of Criminal Procedure. The amount of the security to be paid in such a case may be between CZK 10,000 and 1,000,000 and should be determined with regard to the personal situation of the accused, to the nature of the offence in question and also to the amount of damage which he or she caused.

65. After 1 January 1994 the relevant provisions of the Code of Criminal Procedure remained substantially the same as before.

Article 67 was slightly amended in sub-paragraph (b) to permit remand in custody should the individual “try to influence the witnesses or co-accused who have not yet been heard by the court or otherwise frustrate the investigation into the facts which are of importance for the criminal proceedings”.

Article 71 § 1 provides that the relevant authorities shall give priority to cases involving a person’s detention on remand and deal with them as speedily as possible.

Article 73a §§ 1 and 2 provides that persons detained on remand under Article 67 (a) or (c) of the Code of Criminal Procedure may be released on bail with a minimum security of CZK 10,000, the actual amount being determined by the court, as before, depending on the particular circumstances of the accused and the case.

66. Article 381 § 2 of the Code of Criminal Procedure, as in force throughout the relevant period, provided for the compulsory detention of a person when a request for his or her extradition was granted. In such cases the reasons for detention set out in Article 67 of the Code of Criminal Procedure do not bind the courts.

FINAL SUBMISSIONS TO THE COURT

67. The Government asked the Court to find that the facts of the case disclosed no breach of the Convention.

68. The applicant requested the Court to find a violation of Articles 5 § 3 and 6 § 1 of the Convention and to make an award of just satisfaction under Article 41.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 OF THE CONVENTION

69. The applicant maintained that his detention on remand lasted an unreasonably long time and that he should have been released pending trial. He relied on Article 5 § 3 of the Convention, the relevant part of which provides:

“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. Right to trial within a reasonable time

1. Period to be taken into consideration

70. The Court may examine under Article 5 § 3 the length of the applicant’s detention between 23 April 1993 and 10 January 1995, that is to say from the moment when he was remanded in custody, in respect of the criminal proceedings brought against him in the Czech Republic, until the delivery of the first City Court’s judgment. It may also examine the applicant’s detention on remand between 15 March 1995 and 16 January 1996, that is to say from the moment when the Court of Cassation quashed the first judgment delivered by the City Court until the latter delivered its second judgment (see the *B. v. Austria* judgment of 28 March 1990, Series A no. 175, pp. 15-16, § 39). Accordingly, the detention to be taken into consideration lasted two years, six months and eighteen days.

2. Reasonableness of the length of detention

71. The applicant contended that the domestic courts failed to establish any sufficient grounds reasonably permitting a suspicion of his having committed an offence. In his view, the Czech authorities did not display due diligence when dealing with his case.

72. The Government maintained that the reasons relied on in the relevant decisions were sufficient and that the detention did not exceed the maximum period permissible under Czech law. They considered that the applicant’s right to trial within a reasonable time, as guaranteed by Article 5 § 3, had been respected.

73. The Court reiterates that the reasonableness of the length of detention must be assessed in each case according to its special features. Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty.

It falls in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to 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 facts established 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 of the Convention.

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 ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see, among other authorities, the Assenov v. Bulgaria judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3300, § 154, and the W. v. Switzerland judgment of 26 January 1993, Series A no. 251-A, p. 15, § 30).

74. The Court notes that the charges against the applicant were based on the fact that he had deposited two cheques for 891,412 and 682,139 German marks (DEM) as security in negotiations for the sale of two department stores, and that the vendor had been unable to cash the cheques because they had been uncovered. In these circumstances, the Court considers that there existed a reasonable suspicion that the applicant had committed an offence.

75. As to the grounds for continued detention, the domestic courts relied on the seriousness of the charges, the danger that the proceedings would be obstructed if the applicant were released owing to his probable extradition to Germany in connexion with other criminal proceedings, and the risk of his absconding and committing further offences.

76. As regards the risk of the applicant’s absconding, the Czech courts noted, in particular, that the applicant had earlier absconded from the criminal proceedings in Germany, that he had numerous business contacts abroad and that he risked a relatively heavy penalty. In the Court’s view, this reasoning is “sufficient” and “relevant” and it outweighs the arguments put forward by the applicant.

77. Having reached this conclusion, the Court does not consider it necessary to examine the other grounds for the applicant’s detention relied on by the domestic courts.

78. As regards the conduct of the proceedings by the national authorities, the Court notes, in particular, that more than eight months elapsed between the filing of the indictment and the hearing before the City Court on 28 June 1994. This period does not appear, as such, to be excessive as during this time the City Court had to deal with several requests for further evidence to be taken which the applicant made, notwithstanding that at the end of the investigation he had expressly stated that he had no other proposals in this respect.

79. However, the City Court subsequently adjourned three other hearings to enable further evidence to be taken. As a result, it delivered its first judgment after a delay of another six months.

80. Subsequently the Court of Cassation quashed the judgment of 10 January 1995 on the ground that the City Court had not established or

considered all the relevant facts of the case, that it had applied the law erroneously and that its judgment was unclear. Despite the Supreme Court's intervention to accelerate the proceedings, the City Court did not deliver its second judgment until 16 January 1996, that is to say ten months after its first judgment had been quashed.

81. In these circumstances, the Court finds that "special diligence" was not displayed in the conduct of the proceedings.

82. Accordingly, there has been a violation of Article 5 § 3 of the Convention as a result of the length of the applicant's detention on remand.

B. Refusal to release the applicant on bail

83. The applicant maintained that by refusing to release him on bail the Czech courts infringed his rights under Article 5 § 3 of the Convention.

84. The Government contended that the refusal to accept the security offered by the applicant was compatible with the requirements of Article 5 § 3 of the Convention.

85. The Court notes that during the relevant period the Czech courts rejected the applicant's offers to pay securities of up to 15,000,000 Czech korunas (CZK) as they did not consider it a sufficient guarantee for the applicant's appearance for trial. On one occasion the City Court expressed its readiness to consider releasing the applicant, in view of his health problems, if he paid a security of CZK 30,000,000. In its decision the City Court pointed out that the applicant had issued two uncovered cheques amounting to the equivalent of CZK 28,400,000, that prior to his arrest he had intended to buy two department stores for CZK 338,856,000 and 236,000,000, and that he had undertaken to pay for them by instalments of CZK 150,000,000.

86. Having considered the particular circumstances of the case, the Court finds that neither the repeated refusal of release on bail nor the eventual imposition of a security of CZK 30,000,000, given the scale of the applicant's financial transactions, infringed the applicant's rights under Article 5 § 3 (see, in contrast, the *Neumeister v. Austria* judgment of 27 June 1968, Series A no. 8, p. 40, § 14).

87. The Court further notes that, if the applicant had been granted bail, he would in any case have been redetained pending his extradition to Germany, that any security paid would have had to be returned to him, and that he could not have been extradited before the Czech proceedings had ended (see paragraphs 38, 60 and 66 above).

88. Against this background, the Court finds that there has been no violation of Article 5 § 3 as a result of the refusal to release the applicant on bail.

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

89. The applicant further maintained that the criminal proceedings against him lasted an unreasonably long time. He relied on Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into consideration

90. The criminal proceedings against the applicant were brought on 14 April 1993, when he was accused of fraud, and ended on 31 July 1996, when the Court of Cassation delivered the final decision. Accordingly, the period to be taken into consideration lasted three years, three months and seventeen days.

B. Reasonableness of the length of the proceedings

91. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court’s case-law, in particular the complexity of the case, the applicant’s conduct and the conduct of the competent authorities (see the *Pélissier and Sassi v. France* judgment of 25 March 1999, to be published in the Court’s official reports, § 67).

1. The parties’ submissions to the Court

92. The applicant maintained that his case was not complex and that there had been unjustified delays, in particular in the proceedings before the City Court.

93. The Government contended that the case was complex, that the applicant had contributed to the length of the proceedings at first instance by exercising his defence rights, and that there had been no undue delays on the part of the Czech authorities.

2. The Court’s assessment

94. In the Court’s view, the case was not particularly complex.

95. As to the conduct of the applicant, he contributed to the length of the proceedings in that, *inter alia*, he made numerous proposals for the taking of further evidence between the filing of the indictment and the first hearing before the City Court, notwithstanding that at the end of the investigation he had expressly stated that he had no other proposals in this respect. Furthermore, between 23 November and 19 December 1994, courts at two

levels of jurisdiction dealt with the applicant's request for the exclusion of the City Court's judges.

96. As to the conduct of the domestic authorities, the Court does not find any substantial period of inactivity for which the authorities could be held responsible. During the period under consideration, the case was examined twice by courts at two levels of jurisdiction. The hearings were held at reasonable intervals and adjourned only when it was necessary to obtain further evidence.

97. The Court has noted that on 15 March 1995 the Court of Cassation quashed the City Court's judgment of 10 January 1995 on the ground that it lacked clarity. This was partly remedied by the decision of the Supreme Court of 14 September 1995, which resulted in an acceleration of the proceedings.

98. The Court reiterates that the "reasonable time" requirement set out in Article 6 § 1 and that contained in Article 5 § 3 are to be distinguished from each other (see the *Stögmüller v. Austria* judgment of 10 November 1969, Series A no. 9, p. 40, § 5). Having regard to the circumstances of the case as a whole, the Court finds that the proceedings did not last an unreasonably long time.

99. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

III. 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. Pecuniary damage

101. The applicant sought DEM 939,000 as compensation for loss of earnings. He further claimed CZK 78,513,162.39 on the ground that the department store which was in his possession at the relevant time had gone bankrupt as a result of his detention on remand.

102. The Government considered these claims unjustified.

103. The Court notes that the length of the applicant's detention pending trial was deducted from his sentence. In these circumstances, and even assuming that there is a causal link between the violation of Article 5 § 3 of the Convention found and the sums claimed by the applicant, the claim relating to pecuniary damage is to be dismissed (see the *Muller v. France*

judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 391, § 54).

B. Non-pecuniary damage

104. The applicant maintained that his health had deteriorated because of the conditions of his detention on remand and claimed DEM 500,000.

105. The Government submitted that the applicant had received adequate health care during his detention and regarded his claim as excessive.

106. The Court considers that the applicant suffered non-pecuniary prejudice which is not wholly compensated by the finding of a violation of Article 5 § 3 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant DEM 10,000.

C. Costs and expenses

107. The applicant claimed CZK 2,622,758.40 and DEM 32,750 in respect of the costs and expenses he had incurred in the proceedings before the national courts and later before the Convention organs.

108. The Government contended that the applicant's claims were excessive and that they also included costs which were not related to the criminal proceedings or his detention on remand.

109. The Court recalls that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum (see, among other authorities, the *Nikolova v. Bulgaria* judgment of 25 March 1999, to be published in the Court's official reports, § 79).

110. In the present case, a considerable part of the lawyers' fees claimed concerned the applicant's defence against the criminal charges in the domestic proceedings and his complaint of their alleged unfairness, which the Court declared inadmissible. These fees do not constitute expenses necessarily incurred in seeking redress for the violation of the Convention which the Court has found under Article 5 § 3 of the Convention. Considering the relevant circumstances, and making its assessment on an equitable basis, the Court awards the applicant DEM 10,000.

D. Default interest

111. According to the information available to the Court, the statutory rate of interest applicable in the Czech Republic at the date of adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's detention on remand;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention on account of the refusal to release the applicant on bail;
3. *Holds* that there has been no violation of Article 6 § 1 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, the following amounts:
 - (i) 10,000 (ten thousand) German marks for non-pecuniary damage;
 - (ii) 10,000 (ten thousand) German marks for costs and expenses;
 - (b) that simple interest at an annual rate of 10% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and notified in writing on 25 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President