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

FOURTH SECTION

CASE OF KREPS v. POLAND

(Application no. 34097/96)

JUDGMENT

STRASBOURG

26 July 2001

FINAL

26/10/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kreps v. Poland,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 5 July 2001,

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

PROCEDURE

1. The case originated in an application (no. 34097/96) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Zbigniew Kreps ("the applicant"), on 13 February 1996.

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw (Poland). The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his right to trial within a reasonable time or to release pending trial had not been respected and that criminal proceedings against him had been inordinately lengthy.

4. 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).

5. It was subsequently allocated to the Fourth 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.

6. By a decision of 23 March 2000, the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 13 January 1993 the applicant was detained on charges of armed robbery, burglary and assault occasioning bodily injuries.

9. On 13 April 1993 a bill of indictment was lodged with the Warsaw Regional Court (*Sąd Wojewódzki*). The applicant was indicted on the charges of armed robbery, burglary and assault committed together with six other persons.

10. The court listed hearings for 4, 5 and 6 May 1994 but subsequently cancelled all of them because one of the applicant's co-defendants had failed to appear. On the last of those dates, the hearing was postponed because Z.K. (one of the co-defendants) was ill and the court considered it necessary to obtain a medical report determining whether or not he would be able to take part in the trial. The relevant report was received at the court's registry on 13 June.

11. Two days later the Regional Court set the trial for 6 and 7 September but, on 6 September, it adjourned the hearings since a court interpreter had failed to appear (D.B., one of the co-defendants, was of Lithuanian nationality and therefore not able to follow the trial without the assistance of an interpreter).

12. The first hearing on the merits was held on 8 November 1994. The court heard evidence from four defendants. The trial continued on 9 and 14 November 1994. In the course of those two hearings, the court heard evidence from other defendants.

13. The next hearing took place on 16 January 1995. During that hearing the applicant unsuccessfully asked the court to remit the case to the Warsaw Regional Prosecutor and order a further investigation with a view of indicting his wife. On 17 January 1995, in the course of the next hearing, he made a similar application and stated that if it was not granted, he would not attend hearings. Later, he apologised for his behaviour. A hearing listed for 18 January started with a delay because it emerged from a medical certificate made by a prison doctor that the applicant was ill. On that day the court however decided to proceed with the trial in the applicant's absence because, on the basis of another, subsequently obtained medical certificate, it came to the conclusion that he had misinformed the prison authorities as to the state of his health. The trial continued on 19 and 20 January and on 17, 20 and 23 March 1995. Further hearings were listed for 17, 18 and 19 May 1995. The hearing set for 18 May did not take place because one of the co-defendants had not appeared before the court. In the meantime, on 8 May 1995, the applicant, relying on his previous record of psychiatric treatment, asked the court to order that he be examined by a psychiatrist.

14. On 19 May 1995 the court ordered that evidence be obtained from psychiatrists to establish whether *tempore criminis* the applicant and two of his co-defendants had acted in a state of diminished responsibility. It adjourned the trial to 26 and 27 July 1995.

15. On 22 May 1995 the court requested the Department of Forensic Psychiatry of Warsaw-Mokotów Prison to place the applicant and his co-defendants under psychiatric observation. The applicant underwent that observation from 3 October 1995 to 15 January 1996.

16. On 29 December 1995, 13 January, 13 and 29 February, 4 March and 16 April 1996, the applicant asked the Warsaw Regional Court to release him. He submitted that his detention on remand had meanwhile exceeded two years and that it was putting a severe strain on his family, especially as his child was ill and his wife and mother needed his help.

17. The Warsaw Regional Court examined all those applications on 29 April 1996. It dismissed them, holding that the applicant's detention should continue in view of the reasonable suspicion that he had committed the offences with which he had been charged and the need to secure the proper conduct of the proceedings. The court also considered that the length of the applicant's detention could not in itself be a decisive factor militating in favour of his release. Finally, it added that there were no grounds for releasing him in view of his family situation, in particular under Article 218 of the Code of Criminal Procedure. In that respect, the court relied on a declaration made by the applicant's wife (who stated that she did not wish to obtain any help from him).

18. The applicant appealed, stressing that his detention on remand had meanwhile exceeded three years but his trial had only just commenced. On 23 May 1996 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal in view of the serious nature of the offences with which the applicant had been charged and the need to secure the proper conduct of the proceedings.

19. Meanwhile, on 29 February 1996 and on an unknown date in April 1996, the psychiatric observations ordered with respect to the applicant's co-defendants had been completed. The psychiatrists' reports were received at the court's registry on 21 March and 12 April 1996, respectively.

20. On 8 May 1996, the Regional Court scheduled hearings for 5 and 6 August 1996. It emerged from a subsequent decision of the Supreme Court (*Sąd Najwyższy*) of 13 February 1997 (see paragraph 26 below) that those hearings had been cancelled because the applicant's co-defendants had "disorganised the trial". In particular, one of them had inflicted injuries on himself.

21. On 28 May 1996 the applicant challenged the impartiality of the trial court. The challenge was dismissed on 3 June 1996.

22. On 18 June and 11 September 1996 the applicant made further applications for release. They were dismissed on 4 July and 19 September

1996 respectively. The applicant appealed and, on 28 September 1996, submitted a medical certificate stating that he suffered from gastric ulcers. Following inquiries into the applicant's personal circumstances and his family's situation made by the relevant courts, the contested decisions were eventually upheld on appeal. The courts reiterated the grounds previously given for the applicant's continued detention.

23. On 8 November 1996 the Warsaw Regional Court held a hearing. However, the composition of the panel of the court had to be changed because one of the judges had meanwhile withdrawn from the case. In consequence, the newly-composed trial court had to rehear evidence that had to date been obtained. The trial continued on 12-13, 16 and 18-19 December 1996. On 18 December 1996 the court, considering that the applicant behaved in a disorderly manner (he apparently interrupted the process of obtaining evidence from experts) ordered that he be temporarily removed from the court room. A hearing listed for 21 January 1997 was postponed to 4 February because one of the applicant's co-defendants had failed to appear. In the course of the hearing held on 4 February 1997 the applicant for the second time challenged the impartiality of the trial court.

24. On 21 January 1997 the applicant asked the court to release him. On 6 February 1997 he lodged another application for release. The court dealt with his applications on 3 March 1997 and dismissed them, holding that there were no grounds for releasing him under Article 218 of the Code of Criminal Procedure

25. In the meantime, on 31 December 1996, the Warsaw Regional Court had made an application under Article 222 § 4 of the Code of Criminal Procedure to the Supreme Court, asking it to prolong the applicant's and his co-defendants' detention on remand until 30 May 1997, i.e. beyond the statutory time-limit set in such cases. The Regional Court considered that the prolonged psychiatric observation of three of the co-defendants, the need to obtain evidence and the fact that one co-defendant had gone on a hunger strike and had inflicted injuries on himself fully justified the opinion that the defendants had deliberately obstructed the termination of the proceedings within the statutory time-limit and, consequently, gave sufficient grounds for extending their detention. Referring to the applicant, the court held that he had, by his conduct, obstructed the termination of the proceedings. It did not specify how the applicant prevented completion of the trial.

26. The Supreme Court examined that application on 13 February 1997. It prolonged the applicant's and his co-defendants' detention on remand until 30 April 1997.

27. The trial was to continue on 7 March 1997 but – for unknown reasons – it was postponed to a later date.

28. On 21 March 1997 the applicant – again unsuccessfully – challenged the impartiality of the trial court.

29. The trial continued on 1, 4 and 16 April 1997. On 18 April 1997 the court gave judgment. The applicant was convicted as charged and sentenced to eleven years' imprisonment and a fine of 3,000 Polish zlotys.

30. The applicant appealed against his first-instance conviction in July 1997. The Warsaw Court of Appeal dismissed the appeal on 2 December 1997.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. At the material time the rules governing detention on remand were contained in Chapter 24 of the Law of 19 April 1969 - Code of Criminal Procedure (*Kodeks postępowania karnego*) entitled "Preventive measures" (*"Środki zapobiegawcze"*). The Code is no longer in force. It was repealed and replaced by the Law of 6 June 1997 (commonly referred to as the "New Code of Criminal Procedure"), which entered into force on 1 September 1998.

32. The Code listed as "preventive measures", *inter alia*, detention on remand, bail and police supervision.

Article 209 set out the general grounds justifying imposition of the preventive measures. This provision read:

> "Preventive measures may be imposed in order to ensure the proper conduct of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence."

Article 217 § 1 defined grounds for detention on remand. This provision, in the version applicable until 1 January 1996, provided, in so far as relevant:

> "1. Detention on remand may be imposed if:
>
> (1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when he has no fixed residence [in Poland] or his identity cannot be established; or
>
> (2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means; or
>
> (3) an accused has been charged with a serious offence or has relapsed into crime in the manner defined in the Criminal Code; or
>
> (4) an accused has been charged with an offence which creates a serious danger to society.
>
> ..."

On 1 January 1996 sub-paragraphs 3 and 4 of Article 217 § 1 were repealed and the whole provision was redrafted. From that date onwards the relevant sub-paragraphs read:

> "(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent abode [in Poland]; or
>
> (2) [as it stood before 1 January 1996]."

Paragraph 2 of Article 217 provided:

> "If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years' imprisonment, or if a court of first instance has sentenced him to at least three years' imprisonment, the need to continue detention in order to secure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed."

33. The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

Article 213 § 1 provided:

> "A preventive measure [including detention on remand] shall be immediately lifted or varied, if the basis for it has ceased to exist or new circumstances have arisen which justify lifting a given measure or replacing it with a more or less severe one."

Article 225 stated:

> "Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of those measures, are considered adequate."

The provisions for "mandatory detention" (for instance, detention pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes.

Finally, Article 218 stipulated:

> "If there are no special reasons to the contrary, detention on remand should be lifted, in particular, if:
>
> (1) it may seriously jeopardise the life or health of the accused; or
>
> (2) it would entail excessively burdensome effects for the accused or his family."

34. Until 4 August 1996, i.e. the date on which the relevant provisions of the Law of 29 une 1995 (see also "Amendments to criminal legislation" above) entered into force, there were no time-limits for detention on remand in the court proceedings. From that date on, Article 222 of the Code of Criminal Procedure laid down such time-limits. It read, in so far as relevant:

> ”3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning offences. In cases concerning serious offences [offences for the commission of which a person is liable to a sentence of a statutory minimum of at least three years’ imprisonment] this period may not exceed two years.
>
> 4. In particularly justified cases the Supreme Court may, on the application made by the court competent to deal with the case, ... prolong detention on remand for a further fixed period exceeding the time-limits set out in paragraphs 2 and 3, when it is necessary in connection with a suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings in the terms referred to in paragraph 3.”

On 28 ecember 1996, by virtue of the Law of 6 ecember 1996, paragraph 4 of Article 222 was amended and the grounds for prolonging detention beyond the statutory time-limits included also:

> “ ... other significant obstacles, which could not be overcome by the authorities conducting the proceedings...”

THE LAW

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

35. The applicant complained that his detention pending trial had been excessive and he alleged a violation of 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. Period to be taken into consideration

36. There was no dispute over the fact that the applicant’s detention started on 13 January 1993, when he was remanded in custody on charges of armed robbery, burglary and assault occasioning bodily injuries and that, for the purposes of Article 5 § 3 of the Convention, it ended on 18 April 1997, when he was convicted at first instance. The applicant was accordingly held in pre-trial detention for approximately four years and three months.

However, as Poland’s declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect on 1 May 1993, the period of the applicant’s detention before that date lies

outside the Court's jurisdiction *ratione temporis* (see *Kudła v. Poland* [GC], no. 30210/96, § 102, ECHR 2000-...).

The Court consequently finds that the period to be considered under Article 5 § 3 amounted to four years less twelve days. Nevertheless, in determining whether the applicant's continued detention from 1 May 1993 onwards was justified, the Court will take into account the fact that by that date the applicant had already been in custody for some three months (see the Yağci and Sargin v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 18, § 49; and *Jabłoński v. Poland*, no. 334982/96, § 66, 21 December 2000).

B. Reasonableness of the length of detention

1. Arguments of the parties

37. The applicant submitted that his pre-trial detention had been excessively long and that the relevant authorities had not given valid reasons for holding him in custody for the whole period in question. In his submission, his detention had in effect amounted to serving a sentence of imprisonment.

The applicant went on to argue that the courts, in all their decisions, had repeatedly relied on merely two grounds, namely the serious nature of the offences with which he had been charged and the need to ensure the proper conduct of the proceedings. Those grounds could not, in his view, suffice to justify detention that had lasted more than four years.

In that context, the applicant referred to the Court's established case-law and stressed that on many occasions the Court, while accepting that the detention of individuals facing charges of certain categories of crime could well be justified to prevent social disturbance, had nevertheless considered that such detention would be a "relevant and sufficient" ground only if based on facts capable of showing that the release of the accused would actually disturb the public order.

The courts had not, the applicant added, even in passing considered the possibility of applying other preventive measures – such as bail or release under police supervision – to secure the conduct of the trial. Nor had they explained in their decisions whether, and if so, why and how his release from custody would have impeded the due course of the proceedings.

38. The applicant further maintained that the courts had failed to display "special diligence" in handling his case and that their conduct resulted in the proceedings being substantially prolonged. On that point, he made reference to two, in his opinion considerable, periods of inactivity on the part of the Warsaw Regional Court. A first lull lasted from 13 April 1993, when he had been indicted, to 8 November 1994, when the trial began, i.e. more than one and a half year. The second – which had likewise amounted to nearly one

and a half year – occurred between May 1995 and November 1996. During those periods no hearing was held.

In the applicant's opinion, the resulting delay of three years in the proceedings had to be regarded as excessively long and, in consequence, as incompatible with the requirements of Article 5 § 3, securing the right to "trial within a reasonable time or to release pending trial".

39. The Government disagreed with the applicant on all points. They argued in the first place that the trial court had shown due diligence in dealing with the applicant's case. During the proceedings it had scheduled thirty-four hearings in all. However, many of those hearings had had to be cancelled because the defendants had obstructed the proper conduct of the trial. The applicant himself had contributed significantly to the length of the proceedings. For instance, on 18 January 1995, relying on his allegedly bad health, he had failed to appear before the court. On the next day, relying on the same ground, he had tried to postpone the trial. Also, he had repeatedly challenged the impartiality of the trial court.

The Government maintained, secondly, that the applicant was wrong in saying that the delays in the proceedings had been attributable to the authorities.

As to the period from April 1993 to November 1994, they stressed that the trial had originally been set for 4 May 1994 and that it was postponed to November 1994 only on account of events for which the trial court could not be held responsible.

Referring to period from May 1995 to November 1996, the Government pointed out that during most part of that time some of the defendants and the applicant – who had himself asked the court that he be examined by a psychiatrist – had been under psychiatric observation. After obtaining expert reports, the Regional Court had promptly set hearings for 1 and 5 August 1996 but, again, those hearings had to be postponed on account of circumstances not imputable to the court's conduct.

40. The Government further contended that, given that there had also been reasons justifying the applicant's detention, it could not be said that its length exceeded a "reasonable time" within the meaning of Article 5 § 3.

In that respect, the Government heavily relied on the fact there had been a well-founded suspicion that the applicant had committed three serious offences, which meant that he could have been liable to sentence ranging from five years' imprisonment to the death penalty. They also underlined that the applicant's continued detention had been necessary to ensure that the proceedings followed their proper course, especially as he had – as already mentioned – obstructed the conduct of the trial.

In conclusion, the Government invited the Court to hold that there had been no violation of Article 5 § 3.

2. The Court's assessment

41. The Court recalls that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* cited above, §§ 110 et seq.).

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 demand of public interest justifying a departure from the rule in Article 5 and 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 well-documented 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 also *Jabłoński v. Poland* cited above, §§ 79-80).

42. 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 (ibid.).

43. The Court observes that in the present case the relevant judicial authorities advanced two principal reasons for the applicant's continued detention, namely the serious nature of the offences with which he had been charged and the need to ensure the proper conduct of his trial (see paragraphs 17-18 and 22 above).

The Court accepts that the suspicion against the applicant of having committed the serious offences with which he had been charged may initially have justified his detention. However, it cannot accept that it could be a "relevant and sufficient" ground for his being held in custody for nearly four years.

As regards the need to secure the conduct of the proceedings, the Court notes that the authorities, while repeating that argument, did not indicate a single circumstance suggesting that, if released, the applicant would abscond or evade justice, or any sentence that might be imposed on him, or

that he would otherwise upset the course of the trial (see paragraphs 17-18, 22 and 25 above).

In that context, the Court further observes that the Regional Court and the Court of Appeal did not take into account any other possible guarantees that the applicant would appear for trial – such as bail or release under police supervision – explicitly provided for by Polish law to secure the proper conduct of criminal proceedings (see paragraph 33 above). Nor did the courts mention whether, and if so, why those alternative measures would not have ensured the applicant's presence before them or why, had he been released, his trial would not have followed its proper course.

The Court is, therefore, not satisfied that the reasons given to justify the applicant's detention were "sufficient" and "relevant", as required under Article 5 § 3.

44. That finding would absolve the Court from determining whether the relevant judicial authorities conducted the proceedings in a diligent manner. However, in that context the Court cannot but note that even though the applicant was indicted in April 1993, it took the Warsaw Regional Court a year to set the date for the trial (see paragraphs 9 and 10 above). Later, that court again needed nearly one year to obtain evidence from experts in psychiatry (see paragraphs 15 and 19 above). That resulted in a delay in the proceedings which amounted to approximately two years and which, if counted against the period of some four years the applicant spent in pre-trial detention, must be regarded as significant.

It cannot therefore be said that the authorities showed the "special diligence" required in dealing with the applicant's case.

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

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

46. The applicant further maintained that his right to a "hearing within a reasonable time" had not been respected and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which states:

> "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

47. It was common ground that the proceedings began on 13 January 1993 and that they were terminated by the judgment of the Warsaw Court of Appeal on 2 December 1997. Accordingly, the overall length of the proceedings was four years and nearly eleven months.

However, given its jurisdiction *ratione temporis* (see paragraph 36 above), the Court can only consider the period of four years and seven months which elapsed after 1 May 1993, although it will have regard to the stage reached in the proceedings on that date (see *Kudła v. Poland* cited above).

B. Reasonableness of the length of the period in issue

1. Arguments of the parties

48. The applicant submitted that, given the fact that throughout the entire trial he had been kept in custody, particular diligence should have been displayed by the Polish authorities in handling his case. Yet, having regard to the delays in the proceedings for which the courts were responsible, it could not be said that they had indeed acted with such diligence. Nor could, the applicant further argued, the length of his trial be explained in terms of the nature of the case. The latter had not been particularly complex and it had not differed from many similar cases dealt with by regional courts.

To conclude, the applicant asked the Court to find that his right to a "hearing within a reasonable time" had been violated.

49. The Government replied that the case had been very complex because it had concerned serious charges of armed robbery committed by an organised group of criminals and because the trial court had had to hear evidence from several witnesses and experts.

As to the conduct of the relevant authorities and the applicant, the Government reiterated the arguments adduced by them in the context of the Article 5 § 3 complaint and contended that there had been no violation of Article 6 § 1 in the present case.

2. The Court's assessment

50. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities (see, among many other authorities, *Kudła v. Poland* cited above, § 124; and the Abdoella v. the Netherlands judgment of 25 November 1992, Series A no. 248-A, pp. 16-17, §§ 20 and 24 *in fine*).

51. In the present case the parties expressed discordant opinions on whether or not the applicant's case was complex. Having regard to the number of defendants charged, together with the applicant and the nature of issues involved in the determination of the charges against them, the Court

considers that the case was of a certain complexity. This in itself cannot however justify the entire length of the proceedings in question.

52. In that context, the Court recalls that it has stressed on many occasions, in relation to Article 5 § 3, that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see the Abdoella judgment cited above).

53. The Court has already found that during about two years there was a lack of progress in the proceedings and has considered it incompatible with the notion of "special diligence" (see paragraph 44 above).

That finding is likewise valid in respect of the complaint the applicant made under Article 6 § 1, and on this basis the Court concludes that the Polish authorities failed to fulfil their duty to administer justice expeditiously laid down in that provision.

54. The Court consequently holds that there has also been a violation of Article 6 § 1 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant sought a sum of 200,000 Polish zlotys (PLN) for both moral suffering and loss of earnings and opportunities resulting from his lengthy detention and trial.

57. The Government considered that the amount claimed was excessive and asked the Court to hold that a finding of a violation of the Convention would in itself constitute sufficient and just satisfaction.

In the alternative, they invited the Court to make an award on the basis of its case-law in similar cases and of the economic situation in Poland.

58. The Court's conclusion, on the evidence before it, is that the applicant failed to show that the pecuniary damage pleaded was actually caused by his being kept in custody for the relevant period. Consequently, it sees no justification for making an award to him under that head.

59. The Court however accepts that the applicant suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention and trial – which is not sufficiently compensated by the finding of violations of the Convention.

Making its assessment on an equitable basis, the Court awards the applicant PLN 20,000 under this head.

B. Costs and expenses

60. The applicant, who received legal aid from the Council of Europe for the presentation of his case, sought the reimbursement of 2,000 US dollars or their equivalent in Polish zlotys, for costs and expenses incurred in the proceedings before the Court.

61. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum.

62. Applying the criteria laid down in its case law (see, for instance *Kudła v. Poland* cited above, § 168) the Court considers it reasonable to award the applicant PLN 8,000 for his costs and expenses together with any value-added tax that may be chargeable. less the 4,100 French francs received by way of legal aid from the Council of Europe.

C. Default interest

63. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 30 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

      (i) 20,000 (twenty thousand) Polish zlotys in respect of non-pecuniary damage;

      (ii) 8,000 (eight thousand) Polish zlotys in respect of costs and expenses, together with any value-added tax that may be chargeable,

less 4,100 (four thousand one hundred) French francs received by way of legal aid from the Council of Europe, to be converted into Polish zlotys at the rate applicable at the date of delivery of this judgment;

(b) that simple interest at an annual rate of 30% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 26 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER	Georg RESS
Registrar	President