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

THIRD SECTION

CASE OF GORAL v. POLAND

(Application no. 38654/97)

JUDGMENT

STRASBOURG

30 October 2003

FINAL

30/01/2004

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 Goral v. Poland,

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

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr L. GARLICKI, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 9 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 38654/97) 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, Mr Jerzy Goral ("the applicant"), on 22 July 1997.

2. The applicant was represented by Mr W. Myśliborski, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki.

3. The applicant alleged, in particular, that the facts of his case disclosed violations of Article 5 §§ 1 and 3, Article 6 § 1 and Article 8.

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. The application was 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.

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

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

8. By a decision of 7 November 2002, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1944 and lives in Lublin, Poland.

A. The applicant's pre-trial detention and the criminal proceedings against him

1. The arrest

10. On 23 May 1996 the applicant was taken into custody by the police. On 24 May 1996 the Lublin District Prosecutor (*Prokurator Rejonowy*) charged the applicant with hiding a stolen car and possession of a counterfeit banknote and remanded him in custody. The District Prosecutor considered that there existed a danger of pressure being brought to bear on witnesses. Moreover, he referred to a significant danger to society of the criminal acts allegedly committed by the applicant.

11. The applicant appealed against the District Prosecutor's decision but on 18 June 1996 the Lublin Regional Court (*Sąd Wojewódzki*) dismissed his appeal. The court considered that the reasons given for the applicant's detention had not ceased to exist.

12. On 14 August 1996 the Lublin Regional Court extended the applicant's detention until 23 November 1996. It pointed out that the investigation had not been completed and that there was a risk that if released the applicant would obstruct the criminal proceedings against him. The applicant appealed against this decision but on 12 September 1996 the Lublin Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal.

13. On 14 October 1996 the Lublin Regional Prosecutor decided to take evidence from an anonymous witness. The applicant did not appeal against this decision.

14. In November 1996 the prosecution dropped the charge of possession of a counterfeit banknote.

2. The bill of indictment

15. On 22 November 1996 the Lublin Regional Prosecutor filed with the Lublin Regional Court a bill of indictment against the applicant.

16. On 16 December 1996 the applicant applied for bail but on 17 December 1996 the Lublin Regional Court dismissed his application. It considered that the applicant's two adult children could help his wife, who was ill. Moreover, the evidence gave rise to reasonable suspicion that the applicant had committed the criminal offence with which he was charged.

The court referred to Articles 209 and 218 (2) of the Code of Criminal Procedure.

17. The applicant appealed against this decision but on 15 January 1997 the Lublin Court of Appeal dismissed his appeal. The appellate court referred to Articles 209 and 217 of the Code of Criminal Procedure. It considered that the prison term to which the applicant could be sentenced justified his detention. The court also pointed out that the recent medical examinations of the applicant's wife had shown that she did not need the help of third persons.

18. On 24 March 1997 the applicant applied to the Lublin Regional Court for release from detention. He submitted that his wife was ill and required his help.

19. On 25 March 1997 the Regional Court dismissed the applicant's application. It considered that the evidence gave rise to a reasonable suspicion that the applicant had committed the criminal offence with which he was charged. In addition, the applicant's wife did not require hospitalisation and could be helped by other members of her family.

3. The first hearing before the trial court

20. On 28 August 1997 the first hearing took place before the Lublin Regional Court.

21. On 26 September 1997 the Lublin Regional Court examined an anonymous witness.

22. Subsequently, hearings took place on 1 October and 5 November 1997.

4. The end of pre-trial detention

23. During the hearing held on 20 November 1997 the Regional Court released the applicant from detention.

24. On 18 December 1997 and 7 January 1998 the trial court held hearings.

25. On 9 January 1998 the Lublin Regional Court convicted the applicant as charged and sentenced him to one year and five months' imprisonment and a fine. The applicant appealed his conviction.

26. On 26 May 1998 the first hearing took place before the Lublin Court of Appeal.

27. During the hearing held on 20 August 1998 the appellate court decided to refer a question on a point of law to the Supreme Court (*Sąd Najwyższy*). The question concerned the legal qualification of the criminal offence with which the applicant was charged.

28. On 18 November 1998 the Supreme Court adopted a resolution on the question submitted by the Lublin Court of Appeal.

29. The next hearing before the Lublin Court of Appeal took place on 10 December 1998. The court quashed the applicant's conviction and remitted the case to the trial court.

30. In the course of 1999 the Lublin Regional Court held hearings on 26 March, 29 April, 2 June, 6 and 9 September, and 8 October.

31. On 24 and 29 September, 5 and 26 October 1999, and also 5 April and 10 May 2000, the anonymous witness failed to appear before the court.

32. The first hearing in 2000 was held on 8 August. On 18 September 2000 the applicant informed the court that he was ill.

33. The next hearing took place on 4 October 2000. The Regional Court decided to consider the charges against the applicant in separate proceedings.

34. On 17 October 2000 the Regional Court stayed the criminal proceedings against the applicant because he was in a hospital and could not attend hearings.

35. On 19 December 2000 the court examined the anonymous witness.

36. On 4 January 2001 the court received information that the applicant was released from the hospital. On 13 March 2001 it resumed the proceedings.

37. Subsequently hearing were held on 7 May, 6 June, 5 July and 20 September 2001.

38. On 20 September 2001 the court fined several witnesses who had failed to attend hearings.

39. During the hearing held on 5 December 2001 before the Lublin Regional Court the applicant requested that his case be transmitted to another court as he considered that the Lublin Regional Court was a party to the proceedings before the European Court of Human Rights concerning his application. On 15 January 2002 his request was rejected.

40. On 23 April, 15 May, 20 June and 19 July 2002 the Regional Court held hearings.

5. The conviction

41. On 23 July 2002 the Lublin Regional Court convicted the applicant of receiving stolen cars and sentenced him to two years' imprisonment and a fine.

42. On 19 August 2002 the applicant appealed his conviction. On 26 November 2002 the Lublin Court of Appeal dismissed his appeal.

B. The monitoring of the applicant's correspondence

43. On 13 October 1997 the applicant mailed a letter to the European Commission of Human Rights. He handed a sealed envelope containing the letter to the prison authorities. The authorities submitted it to the Lublin Regional Court where the letter was opened and read.

44. On 20 October 1997 the court returned the letter to the applicant.

45. Subsequently, he did not send the letter through the prison service but instead mailed it through third persons. The letter was received by the European Commission of Human Rights on 4 November 1997.

II. RELEVANT DOMESTIC LAW

A. The pre-trial detention

1. The Code of Criminal Procedure 1969

46. At the material time, the Code of Criminal Procedure 1969 listed as preventive measures, *inter alia,* detention on remand, bail and police supervision. Article 209 of the Code, which set out general grounds justifying the imposition of preventive measures, provided as follows:

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

47. Furthermore, the Code of Criminal Procedure allowed authorities a margin of discretion as to whether to continue the enforcement of preventive measures. Detention on remand was regarded as the most severe preventive measure. Article 213 § 1 of the Code provided as follows:

> "A preventive measure shall be immediately quashed or changed if the grounds therefor have ceased to exist or if new circumstances have arisen, which justify quashing a given measure or replacing it with one that is either more or less severe."

Article 225 of the Code provided:

> "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 these measures, are considered adequate."

Article 217 §§ 1 and 2 of the Code provided:

> "§ 1. Detention on remand may be imposed if:
>
> 1. there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent domicile, or
>
> 2. there is a reasonable risk that he will attempt to induce witnesses 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 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."

Article 218 provided:

"If there are no special reasons to the contrary, detention on remand should be quashed, in particular, when:

1. it may seriously jeopardise the life or health of the accused; or

2. it would entail hardship for the accused or his family."

48. Until 4 August 1996, when the Code of Criminal Procedure was amended, Polish law did not set out any statutory time-limits concerning detention on remand in court proceedings but only in respect of the investigative stage.

Article 222 § 3 of the Code of Criminal Procedure, as applicable after 4 August 1996, provided:

"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 ordinary offences. In cases concerning serious offences this period may not exceed two years."

2. *The Supreme Court's resolutions*

49. On 6 February 1997 the Supreme Court adopted a resolution (no. I KZP 35/96) in which it construed the amendments to the Code of Criminal Procedure 1969, which had entered into force on 4 August 1996. The Supreme Court replied in the affirmative to the question whether, after the lodging of a bill of indictment, the trial court was obliged to take a decision prolonging detention on remand which had meanwhile exceeded the period fixed (or further prolonged) at the investigation stage. The relevant parts of the resolution read as follows:

"Under the provisions of the Code of Criminal Procedure which applied before [4 August 1996, when] the amendment of 29 June 1995 took effect, an obligation to determine the period of detention imposed by a prosecutor at the investigation stage was laid down in Article 211 § 2. However, it did not emerge explicitly from Article 222 §§ 1 and 2 (1) of the Code that, at the investigation stage, a prosecutor or the court competent to deal with the case had each time to determine the point until which detention should last. It was deemed to be obvious that, when prolonging detention at the investigation stage, both the prosecutor and the court competent to deal with the case had to determine the time until which detention was to last under a given decision. It was therefore assumed that the obligation to determine the period of detention arose if a decision on that matter was given before the expiry of the maximum statutory terms applicable at a given stage of the proceedings.

> Comparing the old legislation with the present one leads [this Court] to the conclusion that the legislator, when amending the Code in June 1995, simply extended [the scope of] the rules applicable to continuing and prolonging detention on remand – which had previously applied only at the investigation stage – to the phase of court proceedings.
>
> Before the amendment, the legislation was based on the precept that a suspect should not be detained indefinitely as long as his case was not being dealt with by an independent court. Now, the starting-point is that a suspect (and an accused) should not be detained indefinitely as long as a first-instance judgment is not rendered.
>
> Under the previous legislation there was no need to determine the period of detention after a bill of indictment had been lodged with the court because at this point proceedings reached the phase in which there was no statutory time-limit [on this measure]. For this reason, the court concerned had no interest in [knowing] until when detention had been prolonged under the last decision[;] detention could continue because 'detention of limited duration' had become 'detention of unlimited duration'. There was therefore only a need to ascertain whether there were grounds for continuing detention under Article 213 of the Code."

50. In its further resolution (no. I KZP 23/97) of 2 September 1997, the Supreme Court confirmed that:

> "If the case, in which detention on remand had been ordered, has been referred to a court with a bill of indictment and the period of detention which had previously been fixed expires, the court has a duty to consider whether detention needs to be continued and to give an appropriate decision on this matter."

Referring to the resolution of 6 February 1997, it also stressed that:

> " ... the *ratio legis* of the amendments to criminal legislation is based on the precept that a suspect (accused) should in no case be detained indefinitely until the first-instance judgment is rendered in his case ...
>
> It should be noted that, from the point of view of procedural safeguards for an accused, what is material is not how long his detention at the investigation stage has lasted and how long it has lasted at the stage of the court proceedings, but the total period of his detention and whether his detention and its length are subject to review. If there is such a review at the investigation stage (Article 222 §§ 1 and 2), there is no reason why there should not be one at the stage of the court proceedings ...".

B. The monitoring of correspondence

51. Article 89 § 2 of the Code of Execution of Criminal Sentences 1969, which was in force until 1 September 1998, provided, in so far as relevant, as follows:

> "(...) [the detainee's] correspondence shall be censored by [the organ at whose disposal he remains], unless the organ decides otherwise."

52. Rule 33 of the Rules on Detention on Remand 1989, as amended on 29 December 1995, provides, in so far as relevant, as follows:

"(1) A detainee has a right to correspond.

(2) Detainee's correspondence shall be censored by the organ at whose disposal he remains (...).

(3) Correspondence with the Ombudsman and international institutions for the protection of human rights, which act on the basis of international agreements ratified by the Republic of Poland, is mailed through the intermediary of [that] organ (...)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

53. The applicant complained that his detention after 23 November 1996 was unlawful in breach of Article 5 § 1 of the Convention, which in so far as relevant provides:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

54. The Government contended that the facts of the case disclosed no breach of that provision.

A. Arguments before the Court

55. The applicant submitted that his pre-trial detention after 23 November 1996 was unlawful because there was no judicial decision authorising it.

56. The Government disagreed with the applicant. They submitted that after 23 November 1996 the lawfulness of the applicant's detention remained under "permanent supervision" of the Lublin Regional and Appellate Courts. In this connection, the Government pointed out that on 17 December 1996, 25 March and 28 August 1997 the Regional Court dismissed that applicant's applications for release. In addition, on

15 January 1997 the Lublin Court of Appeal dismissed the applicant's appeal against a decision rejecting his application for release.

B. The Court's assessment

57. The Court notes that between 23 November 1996, when the detention order of the Lublin Regional Court expired, and 17 December 1996, when that court dismissed the applicant's application for release, there was no judicial decision authorising the applicant's detention (see paragraphs 12 and 16 above). The Court further notes that in the judgment of 28 March 2000 in the case of Baranowski v. Poland it found that such a practice of keeping a person in detention under a bill of indictment was not "lawful" within the meaning of Article 5 § 1 of the Convention and therefore breached that provision (see *Baranowski v. Poland,* judgment of 28 March 2000, *Reports of Judgments and Decisions* 2000-III, pp. 257-259, §§ 50-58).

58. The Court sees no reason to distinguish the present case from the Baranowski case. It follows that the applicant's pre-trial detention between 23 November and 17 December 1996 was in breach of Article 5 § 1.

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

59. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, which in so far as relevant 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."

60. The Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

61. The Court considers that the period to be taken into consideration began on 23 May 1996, when the applicant was taken into custody, and ended on 20 November 1997, when he was released (see paragraphs 10 and 22 above). It therefore lasted almost eighteen months.

B. The reasonableness of the length of detention

1. Arguments before the Court

62. The applicant submitted that his pre-trial detention exceeded a reasonable time.

63. The Government averred that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They asserted that the detention was justified by a significant danger to society of crime with which the applicant was charged and the risk of pressure being brought to bear on witnesses. In addition, the evidence collected by the prosecution service gave rise to reasonable suspicion that the applicant had committed the criminal offence with which he was charged.

2. The Court's assessment

(a) Principles established under the Court's case-law

64. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. 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 (see, among other authorities, W. v. Switzerland, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

65. 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 examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned 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.

66. 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. In such cases, the Court must 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 *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

(b) Application of the principles to the circumstances of the present case

67. The Court considers that the applicant's detention was initially justified by a reasonable suspicion that he had committed the offence with which he was charged. It will therefore proceed to ascertain whether the other grounds given by the judicial authorities continued to justify the depravation of liberty.

68. The Court notes that since the filing of the bill of indictment with the trial court on 22 November 1996 the domestic courts justified the applicant's continued detention in particular by the length of a sentence which could be imposed on him (see paragraph 17 above). However, this ground of detention, which goes to the notion of gravity of the offence, cannot constitute a "relevant and sufficient" ground for holding the applicant in detention for almost eighteen months (see, *mutatis mutandis*, *Jėčius v Lithuania*, judgment of 31 July 2000, *Reports* 2000-IX, pp. 259-260, § 94).

69. Moreover, the Court observes that the applicant was sentenced to two years' imprisonment, and therefore, it appears that the actual time spent in prison – if the applicant had been paroled after serving half of his sentence – could have been shorter than the time spent in pre-trial detention.

70. There has therefore been a violation of Article 5 § 3.

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

71. The applicant contended that the criminal proceedings in his case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which in so far as relevant provides:

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

72. The Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

73. The Court considers that the period to be taken into consideration for the purpose of assessing the length of the criminal proceedings from the angle of the "reasonable time" requirement under Article 6 § 1 began on 23 May 1996, when the applicant was taken into custody, and ended on 26 November 2002, when the Lublin Court of Appeal dismissed his appeal (see paragraphs 9 and 42 above). Accordingly, the proceedings lasted about six years and six months.

B. Reasonableness of the length of proceedings

74. The applicant contended that the length of criminal proceedings in his case was in breach of Article 6 § 1.

75. The Government, on the other hand, disputed this view.

76. The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case, the parties' conduct, and so on. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance circumstances call for a global assessment so that the Court does not deem it necessary to consider these questions in detail (see, among other authorities, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; *Olstowski v. Poland*, no. 34052/96, § 86, 15 November 2001).

77. The Court considers that the case was not complex. In addition, the Court notes that no hearing took place between 22 November 1996 and 28 August 1997, and also between 8 October 1999 and 8 August 2000 (see paragraphs 15-20 and 30 and 32 above). It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of about six years and six months.

There has therefore been a violation of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

78. The applicant further complained that the monitoring of his correspondence with the Commission was in breach of Article 8 of the Convention which, in so far as relevant, provides:

> "1. Everyone has the right to respect for (...) his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

79. The Government contended that the facts of the case disclosed no breach of that provision.

A. Arguments before the Court

80. The applicant submitted that the monitoring of his letter of 13 October 1997 to the European Commission of Human Rights was in breach of Article 8.

81. The Government disagreed with the applicant. They asserted that the Lublin Regional Court monitored the letter in accordance with Article 89 § 2 of the Code of Execution of Sentences and returned it to the Detention Centre so that it could be mailed to the Commission.

B. The Court's assessment

82. The Court considers on the evidence before it that the domestic authorities monitored the applicant's letter of 13 October 1997 addressed to the Commission. Therefore there was an "interference by a public authority", within the meaning of Article 8 § 2, with the exercise of the applicant's right to respect for his correspondence.

83. The Court notes that in the judgment of 4 July 2000 in the case of Niedbała v. Poland it found that Polish law concerning the control of correspondence in force before 1 September 1998 did not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on public authorities (see *Niedbała v. Poland*, no. 27915/95, §§ 81-82, 4 July 2000).

84. The Court sees no reason to distinguish the present case from the Niedbała case. It follows that the monitoring of the applicant's correspondence was not "in accordance with the law".

There has therefore been a breach of Article 8.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 6,000 euros (EUR) in compensation for wages lost during the period of his pre-trial detention.

87. The Government submitted that there was no causal link between the alleged violations of the Convention and the applicant's claim.

88. The Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by his being held in custody for the relevant period. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis*, the above *Olstowski* judgment, §§ 89-91,15 November 2001).

B. Non-pecuniary damage

89. The applicant further claimed EUR 19,500 in compensation for non-pecuniary damage. This claim was broken down as follows: EUR 6,500 for a violation of Article 5 §§ 1 and 3 of the Convention, EUR 6,500 for a breach of Article 6 § 1 and EUR 6,500 for a violation of Article 8.

90. The Government submitted that the applicant's claim was inordinate. They asked the Court to rule that a finding of a violation of the Convention constituted in itself sufficient just satisfaction. Alternatively, the Government requested that the award be made on the basis of case-law in similar cases with reference to domestic economic conditions.

91. The Court considers that, in the circumstances of this particular case and deciding on an equitable basis, the applicant should be awarded the sum of EUR 2,000 for non-pecuniary damage.

C. Costs and expenses

92. The applicant did not claim costs and expenses.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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

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

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 30 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Georg RESS
President