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

FOURTH SECTION

CASE OF J.G. v. POLAND

(Application no. 36258/97)

JUDGMENT

STRASBOURG

6 April 2004

FINAL

06/07/2004

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 J.G. v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar,*

Having deliberated in private on 16 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 36258/97) 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 J.G. ("the applicant"), on 7 October 1996. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, Ms S. Jaczewska, of the Ministry of Foreign Affairs.

3. The applicant alleged a breach of Article 5 § 3 of the Convention in that his right to trial within a reasonable time or to release pending trial had not been respected.

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

7. By a decision of 21 January 2003, the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1958 and lives in Domaniów, Poland.

A. The applicant's detention and trial

9. On 23 May 1994 the Wrocław Regional Prosecutor (*Prokurator Wojewódzki*) charged the applicant with drug smuggling and detained him on remand in view of the reasonable suspicion that he had committed the offence in question, the serious nature of that offence and the risk that he might obstruct the proper conduct of the proceedings. On the same day, the applicant's wife was charged with a similar offence and detained on remand. The prosecutor had ordered them to surrender their passports.

10. Subsequently, on several occasions, the applicant asked the prosecutor to release him on bail, but all his applications were to no avail.

11. On 3 August 1994, on an application by the Regional Prosecutor, the Wrocław Regional Court (*Sąd Wojewódzki*) prolonged the applicant's detention on remand until 31 December 1994. The court held that there was a reasonable suspicion that the applicant had committed the serious offence with which he had been charged. It considered that the need to confront suspects with each other, to obtain evidence from abroad and expert evidence justified the prolongation of his detention in order to ensure the proper course of the investigation. That decision was upheld by the Wrocław Court of Appeal (*Sąd Apelacyjny*) on 25 August 1994.

12. On 15 December 1994 the applicant's wife was released from detention on health grounds.

13. On 22 December 1994, on a subsequent application by the Regional Prosecutor, the Wrocław Regional Court prolonged the applicant's detention until 28 February 1995, repeating the reasons already invoked in the decision of 3 August 1994. The Wrocław Court of Appeal upheld that decision and the grounds therefor on 19 January 1995.

14. On 3 January 1995 the applicant's counsel informed the prosecutor that his client's health was very bad and that, in particular, he had lost consciousness during one of their meetings in prison. He asked the prosecutor to release the applicant immediately.

The prosecution first asked the prison authorities to provide them with an updated report on the applicant's health. However, prison doctors did not consider that the applicant's condition militated against keeping him in custody.

15. Meanwhile, on 22 December 1994, the applicant had filed an application for release on bail with the Wrocław Regional Prosecutor and

offered a security in the form of his movable and immovable property. The application was dismissed by the Wrocław Regional Prosecutor on 22 December 1994 and, on appeal, by the Wrocław Prosecutor of Appeal (*Prokurator Apelacyjny*) on 5 January 1995. In those decisions the prosecutors referred to the need to ensure the proper conduct of the proceedings and considered that the applicant's detention should continue until at least the end of the investigation, especially as the applicant had not confessed.

16. On 28 February 1995 the prosecution lodged a bill of indictment with the Wrocław Regional Court. The applicant was indicted on a charge of having smuggled not less than 30 kg of heroin. The bill of indictment comprised 21 charges against 15 co-accused.

17. In March 1995 the applicant made 3 applications for release on health grounds. He complained about frequent headaches and states of unconsciousness, insomnia and heart-burning sensation. He also referred to his difficult family situation and, in particular, to the bad health of his wife, who was suffering from depressive neurosis and chronic gastritis. He produced the relevant medical certificates.

18. On 21 March 1995 the Regional Court refused his applications. It considered that there was a sufficient likelihood that the applicant had committed the offence with which he had been charged. It also held that his detention should continue in view of the need to ensure the proper conduct of the trial. The court did not find that the situation of the applicant's family was so serious as to justify his release on the grounds specified in Article 218 of the Code of Criminal Procedure.

19. On 22 May 1995 the applicant again asked for release. In August 1995 he made several similar applications. He stressed that he had already spent nearly one year in detention. He referred to his own and his wife's bad health, maintaining that she urgently needed help and support from him. He produced several medical and other certificates relating to her health and family situation.

20. On 22 August 1995 the court rejected all the applications. It held that there was a sufficient appearance of likelihood that he had committed the offence in question. It further considered that that offence represented a serious danger to society and that, in view of that fact, there was a need to ensure the proper course of the trial. Referring to the applicant's health, the court observed that the applicant was suffering only from neurosis, which was not in itself an obstacle to his continued detention. As regards his family situation, the court pointed out that other members of their family could provide his wife with the necessary care and assistance.

21. The Wrocław Court of Appeal upheld that decision on 26 September 1995. It found that the charge against the applicant was sufficiently confirmed by evidence heard before the trial court. It also considered that, given the character of the offence, the complicated process of obtaining

evidence and the stage of the proceedings, holding the applicant in custody was necessary to secure the proper conduct of the trial.

22. In the meantime, on 4 August 1995, the Regional Court had rejected the applicant's other applications for release, which he had filed on 3 July and 1 August 1995. This decision was upheld on appeal on 31 August 1995. The courts relied on two principal reasons, namely, on the reasonable suspicion that the applicant had committed the serious offence and the need to ensure the proper conduct of the proceedings. As regards the applicant's health and his family situation, the courts found that there were no grounds for releasing him under Article 218 of the Code of Criminal Procedure.

23. On 13 October 1995 the trial began. The court heard evidence from defendants. Further hearings were held on 1 December 1995 and 19 and 25 January 1996. The applicant repeatedly – but with no success – asked for release.

24. On 25 January 1996 the applicant asked the Regional Court to release him on bail. The court refused on the same day. On 23 February 1996 the decision was upheld on appeal. The courts held that the charge against the applicant had a sufficient basis in evidence that had so far been heard before the trial court. They considered that the applicant's offence represented a serious danger to society and that the nature of the offence, as well as the *modus operandi*, justified the fears that the applicant would obstruct the process of obtaining evidence. As regards the applicant's family situation, the courts observed that his wife was under the proper care in a psychiatric hospital and that her condition was not a reason to apply Article 218 of the Code of Criminal Procedure.

25. On 31 January 1996 the applicant again asked for release on bail. He submitted that the health of his wife had markedly deteriorated and that she was in hospital. On 15 February 1996 the Wrocław Regional Court rejected the application in view of the reasonable suspicion that the applicant had committed the serious offence with which he had been charged and the need to secure the proper conduct of the proceedings. The court found that the bad health of the applicant's wife was not a circumstance that could militate against his continued detention because she was being given care and treatment in hospital.

26. The trial continued on 5 and 7 March and 10, 13 and 31 May, 26 June and 9 July 1996.

27. In the interim, on 20 March 1996, the applicant had filed another application for release. He repeated his previous arguments and produced further documents describing the bad health and difficult personal situation of his wife. He stressed that the total length of his detention was very considerable.

28. The Wrocław Regional Court rejected the application on 9 July 1996.

29. On 29 July 1996, on the applicant's appeal, the Wrocław Court of Appeal quashed the detention order and released him under the condition that he report weekly to the police station at his place of residence and surrender his passport to the court. In addition, the court imposed further restrictions on the applicant's movement and ordered, *inter alia*, that he be prohibited from leaving the territory of Poland. The Court of Appeal did not share the applicant's opinion that he should be released in view of his family situation and held that detention was by itself a measure that inevitably entailed serious consequences for an individual's family life. It considered, however, that the length of the applicant's detention, which had at the time exceeded two years, militated in favour of his release. The court stressed that that element, given the fact that the trial had reached an advanced stage, that evidence had been secured and that there was no danger that the applicant might obstruct the process of obtaining evidence, justified the opinion that the application of a less severe preventive measure would adequately secure the further course of the trial.

30. The trial ended on 23 May 1997. At the final hearing the Regional Prosecutor dropped the charge of drug smuggling against the applicant and asked the court to find him guilty of supplying drugs on the market (*"wprowadzenie do obrotu środków odurzających"*). The Regional Court convicted the applicant of that offence and sentenced him to 3 years' imprisonment and a fine of 15,000 Polish zlotys. The time spent by the applicant in detention pending trial was deducted from the sentence of imprisonment. The applicant did not appeal against his conviction.

B. Criminal proceedings against the applicant in Italy

31. In their observations on admissibility and the merits, the Government submitted that, on 15 May 1995 the Wrocław Regional Police had obtained information from the Warsaw Office of Interpol, according to which the Italian authorities had issued an order to search for the applicant by a "wanted" notice in connection with the suspicion of his having been involved in money laundering and with their intended request for his extradition to Italy.

32. The applicant maintained that throughout his trial he had been unaware of that fact and that he had learnt of it – and of the fact that he had already been sentenced *in absentia* by the Italian courts – on 15 December 2001, when he had been arrested by the German authorities. He produced the relevant warrant of arrest.

33. In that connection, the applicant also submitted that the German courts had refused to extradite him to Italy because the Italian courts had not ensured him a fair trial *in absentia*. To begin with, he had not been informed

of the charges. Nor had he been heard, summoned to stand trial or notified of the judgment. He produced the relevant decision given by the Dresden High Country Court on 19 February 2002. The court considered that his extradition to Italy was inadmissible because "in the trial preceding his conviction a minimum of his defence rights had not been respected".

II. RELEVANT DOMESTIC LAW

34. 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*) ("the 1969 Code") – entitled "Preventive measures" (*Środki zapobiegawcze*). The 1969 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.

The 1969 Code listed as "preventive measures", *inter alia*, detention on remand, bail (*poręczenie majątkowe),* police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*) and prohibition to leave the country (*zakaz opuszczania kraju*).

A. Imposition of detention on remand

35. Article 210 § 1 of the 1969 Code, in the version applicable at the relevant time, read:

> "Preventive measures shall be imposed by the court; before a bill of indictment has been lodged with the competent court, the measures shall be imposed by the prosecutor."

36. Article 222 stated, in so far as relevant:

> "1. The prosecutor may order detention on remand for a period not exceeding three months.
>
> 2. When, in view of the particular circumstances of the case, the investigation cannot be terminated within the period referred to in paragraph 1, detention on remand may, if necessary, be prolonged by:
>
> (1) the court competent to deal with the case, upon the prosecutor's request, for a period not exceeding one year;
>
> (2) the Supreme Court, upon request of the Prosecutor General, for a further fixed term required to terminate the investigation."

B. Grounds for applying preventive measures

37. Article 209 of the 1969 Code set out general grounds justifying imposition of preventive measures. That provision, as it stood at the material time, provided:

> "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."

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

> "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 conduct 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."

39. On 1 January 1996 paragraphs (3) and (4) were repealed. From that date on that provision 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]."

40. Paragraph 2 of Article 217 then read:

> "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."

41. The 1969 Code set out the margin of discretion as to maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand, the most extreme among the preventive measures, 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 therefor 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 these measures, are considered adequate."

The provisions of the 1969 Code providing for "mandatory detention" (for instance, pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June 1995 referred to above.

42. Finally, Article 218 provided:

> "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 serious repercussions for the accused or his family."

THE LAW

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

43. The applicant complained that his pre-trial detention had been inordinately long and alleged a breach of Article 5 § 3, which provides, in so far as relevant:

> "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

44. It was common ground that the applicant's detention started on 23 May 1994, when the Wrocław Regional Prosecutor detained him on remand and that it ended on 29 July 1996, when the Court of Appeal quashed the order for his detention (see also paragraphs 9 and 29 above). Accordingly, the period to be considered under Article 5 § 3 was 2 years, 2 months and 6 days.

B. Reasonableness of the length of detention

1. The parties' arguments

(a) The applicant

45. The applicant maintained that the length of his detention had not been compatible with the requirements of Article 5 § 3.

He went on to argue that the reasons given for holding him in custody had not been relevant. Nor had they be sufficient to justify the entire period he had spent in detention.

In particular, the applicant contested the argument that his detention had served the purposes of securing the conduct of the trial. He pointed out that the courts had not relied on any concrete circumstance or evidence showing that, had he been released, the trial would not have followed its proper course.

46. The applicant further referred to the Government's argument (see paragraph 48 below) that the fact that criminal proceedings had been initiated against him in Italy could be considered a ground for keeping him in detention. In that regard, he pointed out that such a ground had never been invoked by the courts and that he himself had learnt of those proceedings as late as 15 December 2001, which had been several years after his trial.

In sum, the applicant asked the Court to find that his right to "trial within a reasonable time or to release pending trial" had been violated.

(b) The Government

47. The Government submitted that the applicant's detention had not been excessive. They stressed that he had been remanded in custody in view of the strong suspicion that he had committed a very serious offence of drug smuggling and that, in addition, his continued detention had been justified by the need to secure the proper conduct of the proceedings. In that connection, that Government relied heavily on the fact that the applicant had been indicted together with 14 other persons who had acted in an organised group and had committed offences in several countries.

48. The Government also considered that since the applicant had not confessed but had challenged his wife's confession and contested evidence against them, detention had been the only measure capable of preventing him from an attempt to induce his wife to give false testimony.

What was more, the Government added, the applicant had also been charged with a related offence committed in Italy and the Italian authorities had at the material time sought his extradition.

49. The Government conceded that those circumstances had not been stated expressly in all detention decisions. They nevertheless maintained

that, given that on the whole there had been valid grounds for keeping the applicant in custody and that the authorities had acted with due diligence, the requirements of Article 5 § 3 had been satisfied.

2. The Court's assessment

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

50. The Court reiterates 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 must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the 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 the Muller v. France judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 35; and *Jabłoński v. Poland*, no. 33492/06, § 80, 21 December 2000).

51. The persistence of 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.).

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

52. The Court observes that in the present case the judicial authorities relied on three principal grounds, namely the reasonable suspicion that the applicant had committed the offence with which he had been charged, the serious nature of that offence and the need to ensure the proper conduct of

the proceedings. They repeated those grounds in nearly all the decisions they took in the period in question. They also held that the applicant should be kept in custody because there were no special circumstances militating in favour of releasing him on account of the consequences that his detention entailed on his family, as defined in Article 218 of the Code of Criminal Procedure (see paragraphs 9, 11, 13, 15, 18, 20-22, 24 and 25 above).

Furthermore, the Government stated that the fact that the applicant had not confessed, that he had challenged his wife's confession and that the related charges had been brought against him in the Italian courts additionally justified the decision to keep him in detention (see paragraph 48 above).

53. The Court accepts that the suspicion against the applicant of having committed the serious offence with which he had been charged may initially have warranted his detention. It also accepts that the number of the accused involved in the case, the nature of the charges against them, as well as the fact that those charges were closely related justified the need to secure the process of obtaining evidence for the time necessary to terminate the investigation, to draw the bill of indictment and to hear evidence from the accused. Moreover, as the applicant and his wife testified differently, it also appears to have been reasonable to keep him in custody in order to avoid the risk of collusion.

54. However, by the beginning of 1996 the trial court heard evidence from all the defendants and obtained sufficient evidence to confirm the charge against the applicant (see paragraphs 23 and 24 above). At that time the applicant, as he had repeatedly done before, asked the court to release him on bail and relied on the difficult situation of his family (see paragraphs 24 and 25). The length of his pre-trial detention already reached 1 year and 8 months (see paragraphs 9, 24 and 25 above) and, as it emerges from the material in the Court's possession, at no previous stage of the proceedings did the applicant attempt to tamper with evidence or otherwise upset the proper conduct of the trial.

55. In that context, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see the Neumeister v. Austria judgment of 27 June 1968, Series A no. 8, p. 3, § 3; and the Jabłoński v. Poland judgment cited above, § 83).

56. In the present case the Court notes that during the entire period the applicant was kept in detention, and despite his repeated applications for release on bail, the authorities did not envisage any other guarantees that he would appear for trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other "preventive

measures" – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraphs 10, 15, 17-22, 24, 25, 34, and 37-41 above).

What is more, it does not follow from the relevant decisions why the authorities considered that those other measures would not have warranted the applicant's appearance before the court or in what way the applicant, had he been released, would have obstructed the course of the trial. Nor did they mention any factor indicating that there was a real risk of his absconding, going into hiding or evading any sentence that might be imposed (see paragraphs 10, 15. 17-22, 24 and 25 above). In that regard the Court would also point out that although such a potential danger may exist where an accused is charged with a serious offence and where the sentence faced is a long term of imprisonment, the degree of that risk cannot be gauged solely on the basis of the severity of the offence and anticipated sentence (cf. the Muller v. France judgment cited above, § 43).

57. In the circumstances, the Court finds that the grounds given for the applicant's pre-trial detention, even taken together with the fact that the courts did not perceive his personal and family situation as decisively arguing against his being detained, were not "sufficient" and "relevant" to justify holding him in custody for the whole period in question

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant, who was not legally represented, asked the Court to award him 57,200 Polish zlotys (PLN) for his moral suffering caused by his inordinately lengthy detention, loss of earnings resulting from holding him in custody and for costs involved in the proceedings at domestic level and before the Court in Strasbourg.

61. The Government maintained that the sum claimed was excessive.

62. The Court assessed the claim in the light of the principles laid down in its case-law (see the Kudła v. Poland judgment cited above, § 168).

The Court's conclusion, on the material before it, is that the applicant has failed to show 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.

63. On the other hand, the Court accepts that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention – which is not sufficiently compensated by the finding of violation of the Convention.

Considering the circumstances of the case and making its assessment on an equitable basis, it awards the applicant 1,500 euros (EUR) under the head of non-pecuniary damage.

B. Costs and expenses

64. As regards the applicant's claim for cost and expenses, the Court finds that he has not produced any evidence supporting that claim. Consequently, there is no justification for making any award under this head.

C. Default interests

65. 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

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

2. *Holds* by 5 votes to 2
   (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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinions are annexed to this judgment:

(a) partly dissenting opinion of Mr Maruste;
(b) dissenting opinion of Mr Garlicki, joined by Mrs Strážnická.

N.B.
M.O.B.

PARTLY DISSENTING OPINION OF JUDGE MARUSTE

While I am in agreement with the majority in finding a violation of Article 5 § 3, because it is in line with the Court's settled case-law and policy, I find it difficult to agree with the Court's ruling under Article 41. I am against granting any, even modest, non-pecuniary damages in this particular case.

The applicant was found guilty the by the domestic courts of "supplying drugs on the market" and sentenced accordingly. The quantity under consideration was enormous: 30 kilos of heroin. Drug dealing, especially in such a huge quantity and in a substance of this nature, always involves big money. At the same time, given the amount and nature of the drug in question, it potentially destroys many lives and requires a lot of public money and effort for the treatment of drug addicts and the fight against drug trading. In these circumstances I find it unacceptable to complain about "loss of earnings resulting from holding him (the applicant) in custody and for the costs involved in the proceedings ... (§ 60)". In these highly controversial circumstances I am of the opinion that it is right and just to limit the Court's ruling to the finding that a violation constitutes in itself just satisfaction.

DISSENTING OPINION OF JUDGE GARLICKI, JOINED BY JUDGE STRÁŽNICKÁ

To my great regret, I cannot share the majority's view that in this case there has been a violation of Article 5 § 3 of the Convention.

1. There are well-established principles in the Court's case-law concerning the assessment of whether or not a period of detention was reasonable. While I accept those principles, I believe that they have not been correctly applied in the J.G. case.

The Court has, on several occasions, indicated that the question of reasonableness of a period of detention cannot be assessed in the abstract. It must be assessed in each individual case according to its special features. For continuing detention, specific indications of a genuine requirement of public interest are necessary.

In the J.G. case the period of pre-trial detention to be considered under Article 5 § 3 was 2 years, 2 months and 6 days. I am inclined to accept that, in the abstract, that length of detention may suggest a possible violation of the Convention, unless convincing arguments demonstrating the continuing necessity of detention can be found. Unlike the majority, however, I believe that such arguments existed in this case.

It should be noted, at the outset, that the case concerned a serious crime, namely drug smuggling, committed by two groups of criminals (J.G. being the connecting person) which have been active for several months in several countries. Thus it was a classic example of organised crime, by definition, presenting more difficulties for the investigation authorities and, later, for the courts to determine the facts and the degree of responsibility of each member of the group. It is also obvious that in cases of this kind, continuous control and limitation of contacts of the accused among themselves and with other persons may be essential to avoid absconding, manipulation of evidence and, most importantly of all, influencing, or even threatening, of witnesses. Accordingly, longer periods of detention than in other cases may be reasonable.

Secondly, it should be noted that in this case the authorities acted with reasonable speed. The applicant was charged on 23 May 1994, the bill of indictment (composed of 21 charges against 15 co-accused) was lodged on 28 February 1995 and the judgment of the trial court was delivered on 23 May 1997. Most of the hearings took place between 13 October 1995 and 9 July 1996. The applicant did not claim that Article 6 § 1 had been violated. Thus, unlike in some other Polish cases, the finding that the time of detention was unreasonably long cannot result from the finding that the proceedings were, as such, longer than acceptable under Article 6 § 1.

Thirdly, the applicant was found guilty of smuggling more than 30 kilograms of heroine (and only because the smuggling took place outside Poland was he convicted of "supplying drugs on the market"). He did not

appeal against his conviction. Since his detention pending trial was deducted from the custodial sentence, he did not spend more time in prison than finally decided by the court.

Fourthly, as found by the majority (see § 53), the suspicion that the applicant had committed the serious offence may initially have warranted his detention. Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by "sufficient" and "relevant" reasons. The majority indicates (§ 54) that once "by the beginning of 1996 the trial court had heard evidence from all the defendants and obtained sufficient evidence to confirm the charge against applicant", the initial justification for detention lost its validity. I am ready to accept this general finding, but I cannot share the majority's view of the timing. It should be recalled that the main part of the trial (7 hearings) did not end until 9 July 1996. Only after that date was there no longer a risk that the applicant might influence testimonies given by the co-accused or by witnesses. As can be seen from the file, the applicant has never confessed and his wife (who was one of the co-accused in the trial), after having confessed during the initial investigation her (and his) involvement in the drug business, changed her testimony when heard by the court. Thus, as long as the evidence had not been fully presented to the trial court, there was a real risk that the applicant might attempt to interfere with the proper course of the proceedings. That is why, in my opinion, the reasons which had initially warranted the detention ceased to exist only after 9 July 1996 and not already "by the beginning of 1996", as stated by the majority. The application for release was dealt with (and rejected) separately by the trial court on 9 July 1996 and, three weeks later, after hearing J.G.'s appeal, the appellate court ordered his release. This sequence of events demonstrates that there was no unreasonable delay in terminating the applicant's detention.

Finally, I have problems with sharing the majority's view that the authorities did not envisage any "non-custodial" measures to guarantee that the applicant would appear for trial (see § 56). Once more, it should be noted that the majority does not question the reasonableness of the detention until the beginning of 1996. Since, in my opinion, the date of 9 July 1996 seems more appropriate in this respect, the alternative measures were adopted promptly afterwards: the detention was replaced by the obligation to report weekly to the police station and to surrender his passport to the court (see § 29).

There is a general rule that the domestic courts, in particular the trial court, are better prepared to examine all the circumstances of the case and take all necessary decisions, including in respect of pre-trial detention. The Strasbourg Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed. I am not

convinced that such an infringement could be attributed to the domestic courts in the applicant's case.

2. Furthermore, I am not convinced that the finding of a violation should, in this case, be accompanied by awarding to the applicant EUR 1,500 in respect of non-pecuniary damages, although I am not joined by Judge Strážnická on this point. I agree with most of the arguments raised in this matter by Judge Maruste. In addition, I would like to stress that Article 41 provides that just satisfaction shall be afforded "if necessary". The decision concerning just satisfaction must always be taken in accordance with the particular circumstances of the case. In the present case, a decision that the finding of a violation constituted in itself sufficient just satisfaction would better correspond to the nature of the offences committed by the applicant.