



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

THIRD SECTION

CASE OF ŁATASIEWICZ v. POLAND

(Application no. 44722/98)

JUDGMENT

STRASBOURG

23 June 2005

FINAL

23/09/2005

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 Łatasiewicz v. Poland,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr L. GARLICKI,

Mrs A. GYULUMYAN, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 April 2004 and 2 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 44722/98) 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 Wiesław Łatasiewicz (“the applicant”), on 7 March 1998.

2. The applicant, who had been granted legal aid, was represented by M Z. Cichoń, a lawyer practising in Cracow. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and, subsequently, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged that his detention had been unlawful and inordinately lengthy in breach of, respectively, Articles 5 §§ 1 and 3 of the Convention.

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

6. By a decision of 1 April 2004, the Court declared the application partly admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1946 and lives in Kielce. He owned and ran a company.

9. The applicant was arrested on 10 March 1997. On the same day the Kielce District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand for three months in view of the reasonable suspicion that he had committed several counts of fraud. The court observed that the applicant's detention was also justified by the severity of the anticipated penalty in view of the serious nature of the offences at issue. In respect of the applicant's objections to holding him in detention based on health grounds, the court considered those objections unwarranted having regard to three medical reports. The applicant was detained in the Kielce Detention Centre.

10. On 17 April 1997 the prosecution service filed with the Kielce Regional Court (*Sąd Wojewódzki*) a bill of indictment against the applicant, who was the sole accused. He was charged with multiple counts of aggravated fraud committed between December 1989 and May 1993, having acted against the interest of his company and having failed to file a petition for insolvency. The charges of fraud concerned business transactions in which the applicant misled other parties to enter into contracts. The prosecution asked the trial court to hear evidence from one hundred and twelve witnesses, four expert witnesses and it filed a list of seventy-seven victims. The investigation's case-file comprised 16 volumes.

11. From an unspecified date in May 1997 to 29 May 1997 the applicant was held in the Hospital of the Cracow Detention Centre.

12. On 19 September 1997 the applicant's counsel filed an application for release. That application was dismissed by the Kielce Regional Court on 6 October 1997. The court's decision was reasoned as follows:

“The applicant's counsel submitted in his application for release that Wiesław Łatasiewicz should not be detained on account of the state of his health. The court has received a medical certificate from the Kielce Detention Centre which confirms that, [although] W. Łatasiewicz suffers from minor ailments, he is in good health and can remain in the Detention Centre and receive treatment there.

The evidence obtained in the case sufficiently shows that the accused had committed the acts with which he was charged. In view of the gravity of the charges laid against him, his detention is justified by the severity of anticipated penalty. The court considers that none of the grounds for release from detention as provided by Article 218 of the Code of Criminal Procedure apply to Wiesław Łatasiewicz.”

13. On 10 October 1997 the Kielce Regional Court decided to extend the applicant's pre-trial detention until 10 February 1998, relying on the same grounds as originally given for the applicant's detention. It also referred to

the significant number of witnesses to be heard at trial. The Regional Court found no grounds which would justify the lifting of the applicant's detention pursuant to Article 218 of the Code of Criminal Procedure.

14. On 20 October 1997 the applicant's counsel appealed to the Cracow Court of Appeal (*Sąd Apelacyjny*) against the decision of 10 October 1997. He pointed out that there had been no judicial decision authorising the applicant's detention between 10 June 1997, when the detention order issued on 10 March 1997 had expired, and 10 October 1997, the date of the appealed decision. Therefore, the detention during that period had been unlawful. In addition, the counsel asserted that the trial court had remained inactive for a period of six months since the lodging of the bill of indictment, which showed that the applicant's detention was not necessary. He argued that this amounted to a breach of Article 5 § 3 of the European Convention on Human Rights and justified the applicant's release.

15. On 30 October 1997 the Cracow Court of Appeal dismissed the appeal. It agreed with the applicant that there had been no judicial decision authorising his detention between 10 June and 10 October 1997. However, the courts had become aware that such a decision had been necessary only in October 1997 when the Supreme Court's resolution no. I KZP 23/97 of 2 September 1997 had been published. Moreover, the Court of Appeal agreed with the applicant's criticism of a period of inactivity in the proceedings following the lodging of the bill of indictment, but pointed out that in May 1997 the applicant had been taken to a hospital, and in June 1997 he had been allowed to consult the case-file. Nonetheless, the Court of Appeal considered that the serious nature of the applicant's criminal activities and their scale, together with the necessity to examine voluminous evidence, justified his detention.

16. On 19 November 1997 the Kielce Regional Court held the first hearing. It was adjourned until 5 December 1997.

17. Subsequently, the hearing scheduled for 5 December 1997 was postponed until 29 December 1997 due to an illness of the applicant's counsel.

18. On 29 December 1997 the trial court held a hearing and heard several witnesses. The hearing scheduled for 15 January 1998 was adjourned until 18 February 1998 since in the meantime the applicant had been taken to the Hospital of the Cracow Detention Centre.

19. On 15 January 1998 the Regional Court decided to prolong the applicant's detention until 10 May 1998. It observed that there was a reasonable suspicion that the applicant had committed the offences with which he was charged. In addition, the court relied on the severity of the anticipated penalty and the fact that numerous witnesses were to be heard. Finally, it considered that there were no grounds, as provided by Article 218 of the Code of Criminal Procedure, which would justify the applicant's release.

20. On 29 January 1998 the Hospital of the Cracow Detention Centre informed the trial court that the applicant would probably remain in the hospital for three weeks and that his state of health did not prevent him from being held in detention.

21. The subsequent hearings were held on 18 February, 11 and 30 March, 15 and 16 April 1998. At the hearings held on 30 March, 15 and 16 April 1998 the trial court imposed fines on certain witnesses who failed to appear although they had been duly summoned.

22. On 6 May 1998 the Kielce Regional Court prolonged the applicant's detention until 10 July 1998, repeating the grounds that had been previously given. It also referred to the fact that twenty-eight witnesses and four expert witnesses were still to be heard.

23. On 11 May 1998 the applicant appealed against the decision of 6 May 1998. The subsequent hearing was held on 21 May 1998. At that hearing the applicant withdrew his appeal of 11 May 1998. He also requested the trial court to order his examination by three medical experts. The hearing was adjourned until 4 June 1998.

24. The hearing scheduled for 4 June 1998 was adjourned as the applicant was unwell. The next hearing was held on 17 June 1998.

25. On 8, 17 and 18 June 1998 respectively the trial court obtained reports of three medical experts. According to their findings, the applicant could receive treatment while in detention. However, the expert in cardiology opined that the applicant should be treated in the Hospital of the Cracow Detention Centre.

26. On 8 July 1998 the trial court held a hearing. At the hearing the applicant unsuccessfully requested the court to order his release. On the same day the court prolonged the applicant's detention until 10 September 1998, relying on the same grounds as given in its previous decisions. Having regard to the report of the expert in cardiology, the trial court ordered that the applicant be held in the Hospital of the Cracow Detention Centre. The hearing was adjourned until 12 August 1998.

27. On 13 July 1998 the applicant appealed against the decision of 8 July 1998, invoking, in particular, the poor state of his health. On 30 July 1998 the Cracow Court of Appeal upheld the impugned decision.

28. The hearing scheduled for 12 August 1998 was adjourned until 31 August 1998 because the applicant was not brought from the Hospital of the Cracow Detention Centre due to his state of health.

29. On 20 August 1998 the Hospital of the Cracow Detention Centre informed the trial court that the applicant would be unable to participate in the hearing scheduled for 31 August 1998. The hearing scheduled for the latter date was accordingly adjourned. The applicant's defence counsel requested the Regional Court to order the applicant's release.

30. On 7 September 1998 the Kielce Regional Court released the applicant on bail. It also ordered him to report bi-weekly to the police

station and to surrender his passport. The trial court observed that at the present stage of the proceedings, when most of the evidence had been already heard at trial, it was not necessary to prolong the applicant's detention. It also took into account the applicant's poor state of health as evidenced by the certificate issued by the Hospital of the Cracow Detention Centre on 20 August 1998.

31. On 20 May 2003 the Kielce Regional Court convicted the applicant of multiple counts of aggravated fraud committed between September 1991 and May 1993 and sentenced him to two and a half years' imprisonment and a fine. In respect of the other charges against him, the Regional Court discontinued the proceedings because the relevant limitation-period had expired. The applicant appealed against this judgment.

32. On 28 January 2004 the Court of Appeal upheld the applicant's conviction but reduced his sentence to two years' imprisonment suspended for four years. It also ordered him to compensate the victims.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. At the material time the domestic provisions governing detention on remand were contained in the Code of Criminal Procedure of 1969, which is no longer in force as it was repealed and replaced by the Code of Criminal Procedure of 6 June 1997, which entered into force on 1 September 1998.

34. The Code of Criminal Procedure of 1969 listed detention among the so-called "preventive measures" imposed by a prosecutor (those measures including, *inter alia*, detention on remand, bail, police supervision, prohibition to leave the country). After 4 August 1996 (that is, the date on which the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes came into force) detention on remand could be imposed, pursuant to Article 210 § 3, only by a court.

35. Article 209 of the Code of Criminal Procedure 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 the proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence."

36. Article 217 §§ 1 and 2 of the Code defined grounds for detention on remand. That provision, at the relevant time, read:

"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 abode [in Poland]; 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 the 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."

37. 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 severe 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."

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 burdensome effects for the accused or his family."

Article 214 of the 1969 Code, in the version applicable at the material time, stated, in so far as relevant:

"An accused may at any time apply to have a preventive measure quashed or altered. ..."

38. Until 4 August 1996, i.e. the date on which the relevant provisions of the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes entered into force, the law did not set out any time-limits on detention on remand in court proceedings; it did so only in respect of the investigation stage.

Article 222 of the 1969 Code, in the version applicable after 4 August 1996, provided, 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 was liable to a sentence of a statutory minimum of at least 3 years' imprisonment] this period may not exceed two years.”

39. At the relevant time there was no specific provision governing detention on remand after the bill of indictment was lodged with the competent court. Since 4 August 1996 the courts have been and are bound by the maximum statutory time-limits for which detention on remand can be imposed during the entire course of the proceedings. However, at the material time, there was no provision stating that the lodging of a bill of indictment automatically prolonged or replaced a previous detention order. Equally there was no provision stating that this event itself resulted in detention which had originally been prolonged by a court for a fixed period at the investigation stage being continued either for an unlimited period or until a judgment at first instance was given. Nor was there any case-law to that effect. Nevertheless, according to domestic practice, once a bill of indictment had been lodged with the court, detention was assumed to be prolonged pending trial without any further judicial decision being given.

40. It was as late as 6 February 1997 that the Supreme Court, referring to the historical background to the amended criminal legislation, mentioned the practice of keeping an accused in detention under the bill of indictment. It did so in a ruling on the interpretation of the Code of Criminal Procedure. That ruling related to the Code as amended with effect from 4 August 1996, when Article 222 (as amended) set out maximum time-limits for detention on remand not only at the investigation stage but at the whole pre-trial stage. In its resolution (no. I KZP 35/96) the Supreme Court replied – in the affirmative – to the question whether, after the lodging of a bill of indictment with the court competent to deal with the case, that court was obliged to give 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."

41. 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..."

THE LAW

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

42. The applicant complained under Article 5 § 1 (c) of the Convention that he was unlawfully detained between 10 June and 10 October 1997. Article 5 § 1, in so far as relevant, provides:

"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;

...”

A. The parties' submissions

43. The applicant initially submitted that his pre-trial detention between 10 June 1997 and 10 October 1997 was unlawful as there had been no judicial decision authorising his detention in that period. Subsequently, the applicant argued that the period of unlawful detention had begun on 17 April 1997, when a bill of indictment had been lodged with the Kielce Regional Court.

44. The Government maintained that the lawfulness of the applicant's detention before 10 June 1997 “did not raise any doubts”. They also pointed out that on 6 October 1997 the Kielce Regional Court gave a decision dismissing an application for release filed by the applicant. As for the period of the pre-trial detention between 10 June 1997 and 6 October 1997, the Government stated that they “refrain from assessing its compatibility with Article 5 § 1 (c) of the Convention, having regard to the judgment of the Court in the case of *Baranowski v. Poland*”.

B. The Court's assessment

45. The Court notes that between 10 June 1997, when the detention order of the Kielce District Court expired, and 6 October 1997, when the Kielce Regional Court dismissed the applicant's application for release, there was no judicial decision authorising the applicant's detention (see paragraphs 14 and 15 above). It observes that the applicant's detention in the period under consideration was effected solely on the basis of the fact that a bill of indictment had in the meantime been lodged with the Kielce Regional Court.

46. The Court recalls that in its 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).

47. The Court sees no reason to distinguish the present case from the *Baranowski* case. It follows that the applicant's pre-trial detention between

10 June and 6 October 1997 was in breach of Article 5 § 1 of the Convention. Consequently, there has been a violation of that provision.

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

48. The applicant alleged that the length of his pre-trial detention had been excessive and, thus, in breach of Article 5 § 3 of the Convention, 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.”

A. Period to be taken into consideration

49. The applicant was detained on remand on 10 March 1997 and released on 7 September 1998 (see paragraphs 9 and 30 above). Accordingly, he spent in detention pending trial 1 year, 5 months and 28 days.

B. Reasonableness of the length of detention

1. The parties' arguments

50. The applicant submitted that the length of his pre-trial detention was in breach of the “reasonable time” requirement. He argued that the trial court remained inactive during several months and that the first hearing was held only eight months after the bill of indictment had been filed with the trial court.

51. The Government maintained that the length of the applicant's detention was not in breach of Article 5 § 3 and that his detention was duly justified during the entire period at issue. They submitted that the present case was a complex one as it concerned a long-term criminal activity of the applicant who had been accused of having committed several counts of fraud between 1989 and 1993 to the detriment of seventy-seven victims.

52. The Government argued that domestic courts had given “relevant” and “sufficient” grounds for the applicant's detention since they had relied on the reasonable suspicion that the applicant had committed the offences with which he was charged, the heavy sentence which could be imposed on him and the need to take evidence from several witnesses. Moreover, the courts considered that the applicant's case had not disclosed any of the grounds for release from detention as provided in Article 218 of the Code of Criminal Procedure.

53. Furthermore, the Government submitted that domestic courts showed the requisite diligence in the conduct of the proceedings, despite one short period of inactivity. They maintained that between 19 November 1997 and 7 September 1998 the trial court had held 12 hearings and that the adjournment of 4 hearings had been attributable to the applicant's or his counsel's health problems. They also stressed that the trial court had on a few occasions imposed fines on witnesses who had failed to appear.

2. *The Court's assessment*

54. The Court observes that in the present case the judicial authorities relied on three principal grounds, namely (1) the reasonable suspicion that the applicant had committed the offences with which he had been charged, (2) the severity of the anticipated penalty in view of the serious nature of the offences committed by the applicant, and (3) the need to hear evidence from numerous witnesses. 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, in particular, of his state of health, as provided in Article 218 of the Code of Criminal Procedure (see paragraphs 9, 12, 13, 15, 19, 22 and 26 above).

55. The Court accepts that the reasonable suspicion against the applicant of having committed the offences with which he had been charged may initially have warranted his detention. However, with the passage of time that ground inevitably became less and less relevant. The Court must then establish whether the other grounds given by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of liberty.

56. The Court notes that the judicial authorities relied also on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. It acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

57. The Court notes that a hypothetical sentence ranging from 1 to 10 years' imprisonment, to which the applicant was theoretically liable, must, with the passage of time, inevitably have called for reassessment in the light of evidence that was progressively obtained by the court (see *Klamecki v. Poland* (no. 2), no. 31583/96, § 122 *in fine*, 3 April 2003). In reality, the sentence imposed by the trial court, i.e. two and a half years' imprisonment (see paragraph 31 above), was at the lower end of the applicable scale. Moreover, upon the applicant's appeal, that sentence was

reduced to two years' imprisonment suspended for four years (see paragraph 32 above). Against this background, the Court considers that the severity of the anticipated penalty cannot constitute a "relevant and sufficient ground" for holding the applicant in detention for nearly eighteen months.

58. The same holds true in respect of the last ground invoked by the judicial authorities, i.e. the need to hear evidence from numerous witnesses at trial. The Court is not persuaded that that ground alone, or in conjunction with the other grounds relied on by the judicial authorities, could justify the applicant's continued detention, in particular in the absence of any indication that there was a risk that the applicant, who was the sole accused, would obstruct the proper conduct of the proceedings against him. Furthermore, the Court was not provided with any explanation as to how the holding of the applicant in custody could have facilitated the hearing of witnesses by the trial court. In this respect the Court also emphasises that the judicial authorities did not refer in their decisions on the applicant's detention to any danger of his absconding or attempting to influence the witnesses.

59. The Court would also 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 *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 3, § 3; and *Jabłoński*, cited above, § 83).

60. In the present case the Court notes that during the entire period the applicant was kept in detention, and despite his 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 34 and 37 above). What is more, it does not follow from the relevant decisions why the authorities considered that those other measures would not have ensured 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.

61. In the circumstances, the Court finds that the grounds given for the applicant's pre-trial detention were not "sufficient" and "relevant" to justify holding him in custody for the whole period in question.

62. That finding would, as a rule, absolve the Court from determining whether the national authorities displayed "special diligence" in the conduct of the proceedings. However, in that context the Court cannot but note that

even though the applicant was indicted on 17 April 1997, the first hearing before the trial court was held only seven months later, i.e. on 19 November 1997. The impugned delay can, in part, be arguably attributed to the fact that the applicant was hospitalised in May 1997 and that in June of that year he was granted access to the case-file for an unspecified period. However, the Court notes that the delays in organising the trial after the bill of indictment had been lodged were also acknowledged by the Cracow Court of Appeal in its decision of 30 October 1997. Having regard to the above, the Court does not find it established that the authorities displayed “special diligence” in the conduct of the proceedings against the applicant.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant asked the Court to award him a total sum of PLN 969,985.14 and USD 7,500 under the head of pecuniary damage. He claimed loss of earnings in connection with his various business activities which resulted from holding him in custody. He also submitted that due to his detention he was unable to recover claims against the debtors of his company and that the receiver of his company misappropriated its assets. Lastly, he claimed expenses related to the treatment which he had to undergo as a result of his detention.

66. The Government argued that there was no causal link between the applicant's pre-trial detention and the amounts claimed by him. They submitted that the claims at issue related to the highly hypothetical profits allegedly lost as a result of the applicant's detention. The Government maintained that the claim for pecuniary damage was unfounded and exorbitant.

67. The Court finds, on the evidence before it, 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.

B. Non-pecuniary damage

68. The applicant further claimed PLN 100,000 in compensation for the alleged deterioration of his health which resulted from his detention. He further claimed to have suffered distress on account of his detention.

69. The Government argued that the applicant's claim was exorbitant and should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to make an award on the basis of case-law in similar cases and with reference to domestic economic conditions.

70. The Court observes that there is no causal link between the violation of Articles 5 §§ 1 and 3 of the Convention and the alleged deterioration of the applicant's health. On the other hand, it finds that the applicant has suffered non-pecuniary damage as a result of his detention in breach of Article 5 § 1 and on account of distress resulting from the protracted length of the detention, which would not be sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

C. Costs and expenses

71. The applicant, who was granted legal aid by the Court, did not claim any sum in respect of costs and expenses.

D. Default interest

72. 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*
 - (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 3,000 (three thousand 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;

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

Done in English, and notified in writing on 23 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President