



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

FOURTH SECTION

CASE OF SKROBOL v. POLAND

(Application no. 44165/98)

JUDGMENT

STRASBOURG

13 September 2005

FINAL

13/12/2005

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 Skrobol v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 44165/98) 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 Piotr Skrobol ("the applicant").

2. The Polish Government ("the Government") were represented by their Agents Mr K. Drzewicki, and subsequently, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs. The applicant was represented by Ms Agnieszka Suchecka-Tarnacka, a lawyer practising in Warsaw.

3. The applicant complained, in particular, about the length of his detention on remand.

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. By a decision of 8 July 2003, 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 Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 4 November 1993 the Szczecin Regional Prosecutor charged the applicant with the offence of obtaining 71,000,000,000 PLZ under false pretences. On the same date the prosecutor issued a warrant of arrest against the applicant. The applicant was arrested on 6 November 1993 and on 9 November 1993 the Szczecin Regional Prosecutor detained him on remand for three months. On 16 November 1993 the applicant appealed against the detention order. By a decision of 22 November 1993 the Szczecin Regional Court upheld it.

9. On 13 December 1993 the Szczecin Regional Prosecutor prolonged the investigations. On 28 January 1994 the Szczecin Regional Court prolonged the applicant's detention until 6 May 1994. The court observed that the charges laid against him were sufficiently substantiated and that extensive evidence had still to be taken in the case. There were serious grounds for believing that the applicant, if he were to be released, would go into hiding.

10. On 26 April 1994 the Szczecin Regional Prosecutor decided to prolong the investigations case until 6 September 1994. On 29 April 1994 the Szczecin Regional Court prolonged the applicant's detention until 6 September 1994. The court considered that further evidence was required to establish all the facts of the case and that the detention was indispensable to ensure the proper conduct of the proceedings. On 15 June 1994 the Poznań Appeal Court upheld this decision.

11. In May and June 1994 at least thirty one witnesses were heard. On 9 August 1994 the prosecutor dismissed the requests for release submitted by the applicant, his wife and his counsel in June and July 1994. On 9 September 1994 the Appeal Prosecutor upheld this decision.

12. Between 11 July and 7 September 1994 the prosecuting authorities questioned twenty-four witnesses. On 22 August 1994 the prosecutor prolonged the investigation of the case. By a decision of 26 August 1994 the Szczecin Regional Court prolonged the applicant's detention until 6 November 1994, having regard to the necessity of continuing investigative proceedings. In particular, there was a need to carry out certain specific examinations and to examine a number of witnesses. On 4 October 1994 the Poznań Appeal Court upheld this decision.

13. On 21 September 1994 the applicant again requested his release, relying on the fact that his wife was in hospital. This request was dismissed on 26 September 1994 on the ground that she was capable of taking care of the children and of carrying on business activities.

14. On 7 October 1994 the prosecutor prolonged the investigation until 31 May 1995. On 4 November 1994 the Supreme Court further prolonged the applicant's detention until 6 May 1995, considering that there was sufficient likelihood that he had committed the offence in question and there was a real danger of collusion on his part. The case was complex and multi-layered. It was necessary to pursue further investigative proceedings, including a request for judicial assistance from the prosecution authorities abroad. The court observed that the applicant had relapsed into crime and that he had been sought by a wanted notice at the initial stage of proceedings.

15. On 14 December 1994 the prosecutor dismissed the applicant's request for release. Upon the applicant's appeal the Poznań Appeal Prosecutor upheld the contested decision on 16 January 1995. Between 17 and 27 January 1995 the prosecutor heard fourteen witnesses and appointed one additional expert in building matters. On 16 January 1995 the prosecutor dismissed the applicant's subsequent request for release. On 3 February 1995 the Poznań Appeal Prosecutor upheld the contested decision.

16. Between 1 February and 2 March 1995 the prosecutor heard twenty-five witnesses. On 23 February 1995 the prosecutor amended the charges already brought against the applicant.

17. On 13 April 1995 the Regional Prosecutor dismissed the applicant's request for release of 11 April 1995. On 5 May 1995 this decision was upheld by the Poznań Appeal Prosecutor. On 4 May 1995 the Regional Prosecutor closed the investigation and on 5 May 1995 submitted the bill of indictment against the applicant to the Szczecin Regional Court. The bill of indictment numbered 150 pages, listed 111 witnesses to be summoned and requested 716 items of evidence to be disclosed at the hearing.

18. On 5 May 1995 the applicant requested that the case be referred back for further investigation. On 17 May 1995 the Szczecin Regional Court allowed this request. On 23 May 1995 the Regional Prosecutor appealed against this decision. On 6 July 1995 the Poznań Court of Appeal adjourned the examination of the appeal and requested the Supreme Court to provide an interpretation of the legal issues arising in the case.

19. On 31 July 1995 the Supreme Court transferred the case-file back to the Poznań Court of Appeal for an examination of the applicant's requests for release of 1 and 28 June 1995. On 10 August 1995 the Poznań Court of Appeal dismissed these requests. On 22 September 1995 the Supreme Court issued a resolution concerning certain legal questions involved in the case. On 6 October 1995 the Poznań Court of Appeal set aside the decision concerning the referral of the case back for further investigation.

20. On 3 and 7 November 1995 the applicant again requested to be released and offered a bail bond. On 8 November 1995 the Szczecin

Regional Court refused to release him. On 21 December 1995 the Poznań Court of Appeal dismissed his appeal.

21. On 21 December 1995 the Poznań Court of Appeal decided that the case should be examined by the Koszalin Regional Court.

22. On 8 and 16 January 1996 the applicant again requested to be released on bail. On 31 January 1996 the Koszalin Regional Court dismissed this request. On 13 March 1996 the Gdańsk Court of Appeal dismissed his appeal. The applicant's subsequent requests for release were dismissed on 5 and 29 April 1996. The applicant's subsequent requests for release of 6 May, 19 and 24 June 1996 were dismissed at the hearing held on 24 June 1996. At the hearing on 25 June 1996 the applicant again unsuccessfully requested to be released on bail.

23. On 23 July 1996 the applicant again requested to be released. His request was dismissed on 13 August 1996. On 27, 28 and 29 August 1996 the court held further hearings. The applicant's request to be released on bail of 29 August 1996 was dismissed on 30 August 1996. The applicant's appeal was dismissed by the Gdańsk Court of Appeal on 25 September 1996 on the ground that his three-year detention was justified in view of the high probability of his guilt, the seriousness of the charges against him and the risk of a long-term imprisonment. There were no grounds to replace the detention by a more lenient preventive measure given that the bail in the form of real estate, as proposed by the applicant, was of a relatively small value by comparison with the extent of damage caused by him.

24. On 22 November 1996 the Koszalin Regional Court requested the Supreme Court to prolong the detention until 31 December 1997. The court submitted that the applicant's detention was justified by the existence of a sufficient probability of his guilt and the gravity of the charges against him. In addition, the amount of the evidence in the case was enormous. The regional court also expressed the opinion that the applicant, if released, would deliberately obstruct the course of the proceedings or go into hiding.

25. On 28 November 1996 the Koszalin Regional Court dismissed the applicant's requests for release of 12 November 1996.

26. On 3 January 1997 the Supreme Court prolonged the applicant's detention until 31 December 1997. The court relied on the grounds invoked in the previous decisions, i.e. sufficient probability of the applicant's guilt, a justified fear of his absconding as well as the exceptional complexity of the case and the lack of grounds for release provided by Article 218 of the Code of Criminal Procedure.

27. On 22 January 1997 the Gdańsk Court of Appeal refused to examine the applicant's appeal against the decision of 28 November 1996, pointing out that by virtue of a decision of the Supreme Court of 3 January 1997 his detention on remand had been prolonged until 31 December 1997.

28. On 6 February 1997 the Koszalin Regional Court refused to release the applicant, considering that the grounds on which the detention had been

ordered had not ceased to exist. The subsequent hearings in the case were held on 10, 11, 12, 13 and 14 March 1997. The applicant offered bail in the form of a mortgage of real estate belonging to a third person. The court dismissed this request and adjourned the hearing until 15 April 1997.

29. On 15, 16, 17 and 18 April 1997 the court held hearings. The applicant's requests for release were dismissed at the latter hearing. His subsequent requests were dismissed on 20 April, 19 and 30 May 1997 respectively. On 23, 23, 25, 26 and 27 June 1997 the court held hearings. At the hearing of 26 June 1997 the applicant requested to be released on bail and under police supervision. On 27 June 1997 the court dismissed that request. In the meantime the court ordered that the applicant be examined by psychiatrists and a psychologist. The opinion on his mental health was submitted to the court on 10 July 1997.

30. On 16 July 1997 the court again refused to release the applicant. The subsequent hearings in the case were held on 25, 25, 27, 28 and 29 August 1997. At the latter hearing the applicant requested to be released on bail. The court adjourned the examination of the applicant's request for release and ordered that he should submit within 14 days documents concerning the real estate offered as bail by the third person.

31. On 9 September 1997 the requested documents were submitted. On 23 September 1997 the Koszalin Regional Court ordered that the applicant be released and remain under police supervision on condition that he paid 20,000 PLN. It considered that bail in the form of real estate, which belonged to a friend of the applicant, was not acceptable in view of the fact that it constituted part of a matrimonial property.

32. On 19 and 30 September, and 2 and 3 October 1997 the court held further hearings. At the hearing on 29 September 1997 the court again considered the question of the amount of bail offered by the third person. On 30 September and 2 October 1997 the applicant appealed against the decision of 23 September 1997. On 3 October 1997 the applicant once again requested the court to accept a bail bond.

33. At the hearing of 3 October 1997 the court dismissed the applicant's requests for release, emphasising that the time-limit of 14 days for paying the bail sum proposed was still valid and the applicant's appeals were premature.

34. Further hearings were held on 27, 28 and 29 October 1997. At the hearings of 29 October and 5 November 1997 the applicant again requested to be released on bail. On 7 November 1997 he appealed against the decision of 3 October 1997. On 18 November 1997 the applicant requested to be released. On 20 November 1997 the Koszalin Regional Court dismissed the applicant's requests for release and ordered again that his detention be continued. However, the court envisaged the possibility of imposing a less severe preventive measure provided that the applicant paid 20,000 PLN as bail.

35. On 28 November 1997 the applicant again requested to be released under police supervision. On the same day he appealed against the decision of 20 November 1997. On 1 December 1997 the Koszalin Regional Court ordered that the applicant be released on condition that he paid 15,000 PLN. The court noted that police supervision alone was not a sufficient preventive measure in the circumstances of the case. Since the applicant did not pay the bail, his detention on remand continued.

36. At the hearing on 18 December 1997, the Koszalin Regional Court requested the Supreme Court to extend the applicant's detention on remand until 30 June 1998. The court found that the applicant's request to have certain witnesses heard and some additional expert opinions taken would cause a delay in the final stage of the proceedings. Furthermore, there was a reasonable risk that the applicant, if released, would deliberately obstruct the proper course of the proceedings or go into hiding. The court refused to impose police supervision on the applicant, offering again the possibility of granting bail in the sum of 15,000 PLN.

37. By virtue of the Supreme Court decision of 20 January 1998 the applicant's detention was prolonged until 30 June 1998. On 23 January 1998 the Koszalin Regional Court dismissed the applicant's request for release of 20 January 1998, finding that the circumstances justifying the applicant's detention had not ceased to exist. Besides, the applicant had not availed himself of the possibility of paying bail in the amount of PLN 15,000 given to him by the court on 1 December 1997.

38. The applicant's subsequent requests for release were dismissed on 12, 23 February and 3 March 1998. In its decision of 23 February 1998 the court observed that more time was required in order to assess new evidence submitted by the applicant and that there was a serious threat that the applicant might obstruct and prolong the proceedings. In its decision of 3 March 1998 the court referred to the reasoning of the previous decisions.

39. Further hearings were held on 25 and 16 May 1998. At the latter hearing the applicant again requested to be released on bail in the amount of 15,000 PLN. The court dismissed this request at the same date. The applicant's subsequent request for release of 5 June 1998 was dismissed on 19 June 1998.

40. The last hearing in the case was held on 26 June 1998. On the latter date the court decided to release the applicant. On 29 June 1998 the court delivered judgment in the case and sentenced the applicant to six and a half years imprisonment.

II. RELEVANT DOMESTIC LAW

1. The 1969 Code of Criminal Procedure

41. The 1969 Code of Criminal Procedure, which remained in force until 1 September 1998, listed as preventive measures, *inter alia*, detention on remand, bail and police supervision.

42. Article 209 of the Code, which set out general grounds justifying the imposition of preventive measures, provided that preventive measures could be imposed in order to secure the proper course of proceedings if the evidence against the accused sufficiently justified the opinion that he had committed a criminal offence.

43. Article 212 provided that a decision concerning preventive measures could be appealed to a higher court. A prosecutor's order on detention on remand could be appealed to the court competent to deal with the merits of the case. Article 213 of the Code provided that a preventive measure should be immediately quashed or changed if the grounds therefore ceased to exist or if new circumstances arose, which justified quashing a given measure or replacing it with another.

44. Article 225 of the Code provided that detention on remand should be imposed only when it was mandatory and should not be imposed if bail or police supervision, or both of these measures, were considered adequate.

45. Article 217 of the Code, before it was amended on 1 January 1996, provided insofar 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 his identity cannot be established or he has no permanent domicile,
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.”

46. Pursuant to Article 226 of the Code, bail surety, in the form of cash, securities or mortgage, could be deposited by the accused, or by another person. Determination of the sum, form and all relevant modalities of the bail surety should be made, having regard to the financial situation of the accused and, as the case may be, another person depositing the bail surety, as well as to the assessed damage which could have been caused by the offence concerned and to the character of the offence.

47. 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.

48. Article 222 of the Code of Criminal Procedure, as applicable after 4 August 1996, provided that the whole period of detention on remand until the date on which the court of first instance gave judgment could not exceed one year and six months in cases concerning ordinary offences. In cases concerning serious offences this period could not exceed two years.

49. In particularly justified cases the Supreme Court could, upon the request of the court competent to deal with the case, prolong detention on remand for a further fixed period exceeding the above-mentioned periods, when, *inter alia*, it was necessary in connection with a suspension of the proceedings or when evidence had to be obtained from abroad or when the accused deliberately obstructed the termination of the proceedings within the above-mentioned time-limits.

2. The 1997 Code of Criminal Procedure.

50. On 1 September 1998 the 1997 Code of Criminal Procedure replaced the 1969 Code.

Article 263 of the 1997 Code, insofar as relevant, provides:

“§ 1. During investigation the court which decides about detention on remand shall impose it for a period not longer than 3 months.

§ 2. If the special circumstances of a case make it impossible to conclude the investigation within the time-limit provided in § 1, detention on remand may be prolonged, at the request of the prosecutor and when it is necessary, by:

the trial court – for up to 6 months,

the appeal court – for a further fixed period necessary to conclude the investigation but not longer than 12 months.

§ 3. The length of detention on remand until the delivery of a first judgment by the trial court shall not exceed 2 years.

§ 4. Detention on remand may be prolonged for a fixed period exceeding the periods provided in §§ 2 and 3 only by the Supreme Court at the request of the court dealing with a case (...) – if it is necessary because of the suspension of criminal proceedings, the prolonged psychiatric observation of an accused, the prolonged preparation of an expert opinion, the collection of evidence in a particularly complicated case or abroad, or a delay in the proceedings caused by an accused, as well as of other obstacles which cannot be overcome”.

THE LAW

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

51. The applicant complained under Article 5 § 3 of the Convention about the length of his detention on remand. He also complained that his detention had been prolonged because the courts imposed excessive conditions on his release on bail.

Article 5 § 3 reads:

“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. The Government’s submissions

52. The Government admitted that the applicant’s detention on remand for a period of four years, seven months and twenty days, had lasted a considerably long time. However, the Government asserted that there had been valid reasons for holding the applicant in custody. He had been charged with serious offences, based on sufficient evidence. There was a high risk of his absconding, colluding and tampering with evidence, if he had been released. The applicant had clearly contributed to the prolongation of the investigations in that complex case by reading only a few pages a day of the voluminous case-file. His continued detention was subject to permanent and diligent supervision by the domestic courts. Moreover, at some stage of the proceedings, the courts expressed the willingness to release the applicant on bail, but he had not availed himself of that opportunity. In the Government’s view, the bail bond in the form of a mortgage on real estate, belonging to a friend of the applicant, had not provided sufficient guarantees in view of the fact that it formed part of a joint matrimonial property.

B. The applicant’s submissions

53. The applicant submitted that the overall period of his detention on remand was exceptionally long and as a result it was, at least to some extent, a punitive measure against him. In his opinion the reasons given by the authorities in their detention decisions could not be considered as relevant and sufficient so as to justify the whole lengthy period of his detention. The applicant submitted that there was no legal obstacle preventing the establishment of a mortgage on real estate that constituted a part of joint matrimonial property provided that the spouse gave his or her consent. As

regards the bail, which was at first fixed in the amount of PLN 20,000 and then in the amount of PLN 15,000 by the Koszalin Regional Court, it exceeded by nineteen and fourteen times the then average monthly salary in Poland, whereas the applicant was in a very difficult financial position, having been declared bankrupt by a decision of the Koszalin District Court of 11 June 1997. The applicant argued that the investigative proceedings were not conducted with special diligence on the part of the authorities. He pointed out that the first hearing in his case was held more than fifteen months after the investigation was closed and more than thirteen months after the bill of indictment had been lodged with a court.

C. The Court's assessment

1. General principles concerning the length of detention

54. Under Article 5 § 3 the national judicial authorities must ensure that 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 a departure from the rule in Article 5, and set them out in their decisions on the applications for release.

55. 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. In such cases, the Court must establish whether the other grounds given by the 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 and 153, ECHR 2000-IV)".

56. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered 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* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

57. The Court further recalls that according to its case-law, the amount of the bail must be assessed principally by reference to him, his assets and his relationship with the persons who are to provide the security, in other words to the extent to which it is felt that the prospect of loss of the security or of action against the guarantors in case of his non-appearance at the trial will act as a sufficient deterrent to dispel any wish on his part to abscond

(*Neumeister v. Austria*, judgment of 27 June 1968, Series A, p. 40 § 14). The accused whom the judicial authorities declare themselves prepared to release on bail must faithfully furnish sufficient information, that can be checked if need be, about the amount of bail to be fixed. As the fundamental right to liberty as guaranteed by Article 5 of the Convention is at stake, the authorities must take as much care in fixing appropriate bail as in deciding whether or not the accused's continued detention is indispensable (*Iwańczuk v. Poland*, no. 25196/94, 15 November 2001, § 66).

2. Application of the above principles to the present case

58. The Court first observes that the applicant's requests to be released on bail were unsuccessful, the courts considering that the bail in the form of real estate, as proposed by the applicant, was of a relatively small value in relation to the gravity of the offences concerned and the extent of pecuniary damage caused by the offences. It further observes that the court dismissed his later request to be released on bail in the form of a mortgage of real estate belonging to a third person. Subsequently, by a decision of 23 September 1997 the court ordered that the applicant be released and remain under police supervision upon payment of bail of PLN 20,000. This amount was subsequently reduced to PLN 15,000. The Court observes that the applicant eventually did not pay the bail as determined by the court.

59. Having regard to the circumstances of the case, in particular the character of the offences concerned and the extent of the fraud involved in the offences, the Court is of the view that the courts' decisions concerning the offer of bail are not open to criticism. The real property the applicant proposed by way of surety was either of small value, or belonged to a third party. The conclusions of the courts that the applicant's offer of bail failed to provide a sufficient deterrent against flight do not appear arbitrary or unjustified. The Court also observes that the bail fixed by the decision of 23 September 1997 was later considerably reduced.

60. On the other hand, the Court observes that the domestic authorities, in their decisions concerning the applicant's detention, relied essentially on the gravity of the charges against him. They also referred to the risk of collusion and of tampering with the evidence as well as to the danger of his impeding the course of the proceedings. As regards the risk of collusion, the Court considers that no concrete factual circumstances were relied on by the courts in this respect other than the seriousness of the offences concerned and the risk that the applicant would receive a severe sentence.

61. The Court has considered whether the authorities, when examining the case, showed the diligence required in cases in which the accused is detained.

In this respect the Court first observes that from November 1993 until at least September 1997 the proceedings in the case were progressing very slowly. The bill of indictment was submitted to the Szczecin Regional Court

on 5 May 1995, but that the first hearings in the case were held more than one year later, at the end of June 1996. It is true that during that time the courts had been examining the applicant's requests for release, which he submitted on 1 and 28 June, 3 and 7 November 1995, 8 and 16 January, 5 and 29 April 1996. However, the Court observes that later on, after the first hearing on the merits had been held in the case, there were long intervals between the hearings, for example six months between the hearings in August 1996 and those in March 1997. Later on, from September 1997 the hearings were held more often and the proceedings were conducted more efficiently.

62. On the whole, while acknowledging that there were good reasons to impose and continue the applicant's detention at the beginning of the proceedings, especially in view of the complexity of the investigation proceedings in his case, the Court finds it difficult to accept that the grounds relied on by the authorities were sufficient and relevant to justify his detention for the whole period of four years, seven months and twenty days.

63. The Court also takes the view that the main reasons invoked by the courts in their refusals to release the applicant gradually lost their force and relevance as the investigations proceeded.

64. In the circumstances, the Court concludes that the grounds stated in the impugned decisions were not sufficient to justify keeping of the applicant in detention on remand for over four years.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant submitted that the length of his detention caused serious distress to him and to his family. He assessed the amount of non-pecuniary damages corresponding to his suffering at PLN 1,000,000.

68. The applicant further submitted that as a result of his detention he suffered heavy losses in that, having been deprived of liberty, he was unable to manage his business in a proper way. He submits that he suffered losses in the amount of PLN 200,750,386.

69. The Government maintained that the amounts claimed were excessive.

70. The Court's conclusion is that the applicant has failed to show that the pecuniary damage he pleaded was actually caused by his detention on remand. His claims are essentially based on lost business opportunities. The Court cannot speculate as to what the applicant's business situation would have been had he not been detained. Consequently, the Court sees no justification for making any award to him under that head.

71. 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 3000 euros (EUR) under the head of non-pecuniary damage.

B. Costs and expenses

72. The applicant, who was granted legal aid, did not seek further reimbursement of legal costs and expenses in connection with the proceedings before the Court.

C. Default interest

73. 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 § 3 of the Convention as regards the length of the applicant's detention on remand;
2. *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 the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;

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

Done in English, and notified in writing on 13 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President