



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

FOURTH SECTION

CASE OF GÓRSKI v. POLAND

(Application no. 28904/02)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

15/02/2006

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 Górski 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 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 28904/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Wojciech Górski ("the applicant"), on 22 July 2002.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 4 May 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. The pre-trial detention**

4. The applicant was born in 1964 and lives in Rumia, Poland.

5. On 31 August 1999 the applicant was arrested by the police on suspicion of having committed a series of armed robberies in an organised group.

6. On 1 September 1999 the Gdańsk District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand pending the investigation. It considered that in the light of the evidence obtained in the investigation, there was a strong likelihood that the applicant had committed the offences with which he had been charged. The District Court also noted that there was a reasonable risk that the applicant could induce witnesses to give false testimonies or obstruct the proper course of the proceedings by other unlawful means, since he had not admitted the offences and the investigation was pending. Lastly, the District Court had regard to the severity of anticipated penalty.

7. On 18 November 1999 the Gdańsk Regional Court (*Sąd Okręgowy*) prolonged the applicant's detention until 29 February 2001.

8. On 16 February 2000 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) ordered that the applicant and a certain T.M., a second detained suspect, be held in custody pending investigation until 30 June 2000. It held that the continued detention was justified by the reasonable suspicion that the applicant had committed the offences with which he had been charged. That suspicion was based primarily on evidence given by a certain A.Ł., another member of the same criminal group, who acted as a witness against the other suspects. The Court of Appeal also considered that the continued detention was necessary in view of the serious nature and scale of the offences in question. Furthermore, it was also justified by the need to obtain evidence from many sources.

9. On 10 April 2000 the Supreme Court upheld that decision. It added that prolongation of detention was necessary given the organised character of the criminal activities of the applicant and T.M.

10. On 20 June 2000 the Gdańsk Court of Appeal prolonged the applicant's detention until 30 August 2000. In addition to the grounds previously given, it observed that that the applicant's detention was justified by the complexity of the investigation and the likelihood that a severe penalty would be imposed.

11. On 10 July 2000 the Gdańsk Regional Prosecutor laid additional charges against the applicant.

12. On 17 August 2000 the Supreme Court (*Sąd Najwyższy*), on an application from the Prosecutor General (*Prokurator Generalny*), extended the applicant's detention until 15 December 2000. It found that the strong suspicion against the applicant of having committed the serious offences in question, the severity of the anticipated penalty and the need to obtain further evidence warranted holding him in custody.

13. Meanwhile, seven other persons were charged and detained in connection with the same set of offences.

14. On 13 December 2000 the Gdańsk Court of Appeal, on an application from the Gdańsk Prosecutor of Appeal (*Prokurator Apelacyjny*), prolonged the applicant's detention pending the investigation until 31 March

2001. It reiterated the original grounds given for his detention. Taking into account the nature of the offences, the Court of Appeal added that the fact that the charges against all the nine suspects were closely interrelated justified a fear that, once released, they might obstruct the proceedings. It also referred to the particular complexity of the case. Furthermore, it noted that the prolongation of the investigation was due to the fact that new suspects had been identified in the course of the investigation.

15. Meanwhile, a tenth suspect had been detained in connection with the same investigation.

16. On 15 January 2001 the Gdańsk Regional Prosecutor (*Prokurator Okręgowy*) altered the charges against the applicant. Ultimately, he laid 20 charges against him. They comprised 1 count of attempted robbery, 3 counts of robbery, 5 counts of armed robbery, 4 counts of burglary, 6 counts of possessing a firearm without a licence and 1 count of theft.

17. On 7 March 2001 the Court of Appeal, on an application by the Gdańsk Prosecutor of Appeal, prolonged the applicant's and his 9 co-suspects' detention until 31 May 2001. It held that the original grounds given for the applicant's detention were still valid and that the need to obtain DNA evidence justified the continuation of that measure.

18. On 15 May 2001 the Regional Prosecutor indicted the applicant on the 20 charges laid against him on 15 January 2001 before the Gdańsk Regional Court (*Sąd Okręgowy*). The bill of indictment listed 120 charges brought against 19 accused, who were all detained on remand. The case-file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses.

19. On 17 May 2001 the Regional Court ordered that the applicant be detained pending trial until 31 August 2001, finding that it was necessary in order to prevent him – and his other 12 detained co-defendants – from evading justice or tampering with evidence.

20. The trial began on 28 December 2001. However, as at April 2002 the reading out of the bill of indictment by the prosecution was still continuing. Initially, the trial court held three hearings per month. As from June 2002 it decided to hold five hearings per month.

21. Since on 31 August 2001 the applicant's detention reached the statutory time-limit of 2 years laid down in Article 263 § 3 of the Code of Criminal Procedure, further prolongation of the applicant's detention was ordered by the Gdańsk Court of Appeal. During the trial the Court of Appeal prolonged the applicant's detention several times. The relevant decisions were given on 22 August 2001 (prolonging his detention until 31 March 2002), on 28 March 2002 (extending his detention up to 30 September 2002), on 11 September 2002 (ordering his continued detention until 31 December 2002), on 18 December 2002 (prolonging that period until 30 June 2003), on 25 June 2003 (extending his detention up to 31 December 2003), on 17 December 2003 (ordering his continued

detention until 30 June 2004), on 23 June 2004 (prolonging his detention until 31 December 2004), on 15 December 2004 (prolonging his detention until 31 March 2005) and on 30 March 2005 (extending that period until 30 June 2005). The court held that the grounds previously given for his continued detention were still valid.

22. On 19 September 2001 the Court of Appeal dismissed the applicant's appeal against the decision of 22 August 2001, prolonging his detention. It held, *inter alia*, that Article 258 § 2 of the Code of Criminal Procedure alone constituted a sufficient ground for the applicant's detention as he had been charged with an offence for the commission of which he was liable to a statutory maximum sentence of at least 8 years' imprisonment.

23. In its decision of 23 June 2004, the Court of Appeal observed that up to April 2003 the main reason for the delays during the trial was the obstructiveness of the defendants and the abuse of the rights of the defence.

24. In its decision of 18 January 2005 dismissing the applicant's appeal against the decision of 15 December 2004 prolonging his detention, the Court of Appeal held that Article 258 § 2 of the Code of Criminal Procedure established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It added that the risk or absconding of tampering with witnesses which existed in the present case did not have to be supported by any concrete facts, but resulted from the above presumption.

25. On 21 March 2005 the trial court made a severance order with a view to expediting the proceedings, and thereafter four defendants (J.N., G.P., Z.S. and Z.C.), who in the meantime had been released from detention, were to be tried separately from other defendants.

26. In the course of the proceedings the applicant made numerous, unsuccessful applications for release and appealed, likewise unsuccessfully, against refusals to release him and decisions extending his detention.

27. It appears that the applicant is still in detention pending trial.

B. The prison term

28. On 23 September 2003 the applicant began to serve a three years' imprisonment sentence imposed on him in another set of criminal proceedings. That sentence is due to come to an end on 3 May 2006.

II. RELEVANT DOMESTIC LAW

29. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a

social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition to leave the country (*zakaz opuszczania kraju*).

30. Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

“1. Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing another, serious offence; they may be imposed only if the evidence gathered shows a significant probability that an accused has committed an offence.”

31. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

“1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a reasonable risk that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least 3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed.”

32. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

“1. Detention on remand shall not be imposed if another preventive measure is sufficient.”

33. Article 259, in its relevant part, reads:

“1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family.”

34. The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

35. Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

“1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, for the purpose of a prolonged psychiatric observation of the accused or a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

36. On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested with the court of appeal within whose jurisdiction the offence in question has been committed.

THE LAW

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

37. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which reads as follows:

“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.”

38. The Government contested that argument.

A. Admissibility

39. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

40. The Court observes that the applicant was arrested on 31 August 1999 and detained on remand on the following day. He is still in detention pending trial before the first-instance court. Accordingly, the total period of his detention in the present case has exceeded 6 years.

41. However, on 23 September 2003 the applicant began to serve a three years' imprisonment sentence which had been imposed on him in another set of proceedings. The Court recalls that in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). Thus, the period of the applicant's detention from 23 September 2003 onwards must be subtracted from the total period of the applicant's detention since during this time he has been serving a prison sentence resulting from another conviction.

42. Accordingly, the period of the applicant's detention on remand to be considered under Article 5 § 3 amounts to 4 years and 23 days.

2. The reasonableness of the length of detention

(a) The parties' arguments

43. The Government argued that the length of the applicant's detention had not been excessive. They submitted that his detention had been duly justified in its entire period. The Government relied firstly on the existence of serious suspicion that the applicant had committed the offences in question.

44. Furthermore, the Government referred to the serious nature of those offences and the severity of the anticipated penalty. They argued that the likelihood that a severe penalty would be imposed could induce the accused to interfere with the proper conduct of the proceedings. They also submitted that the risk of the defendants' obstructing the proceedings or tampering with evidence was increased by the fact that they had been charged with having acted in an organised group. The Government pointed out that one of the suspects had attempted to influence the testimonies of witnesses prior to his arrest. Thus, the domestic courts had considered it indispensable to keep

the applicant and his co-defendants in custody until the trial court had heard all relevant witnesses.

45. The Government underlined that the serious nature of the charges brought against the applicant as well as the fact that there were 19 defendants and that the case concerned a significant number of offences committed in an organised group between 1991 and 1999 in different parts of Poland, required that the applicant be held in custody in order to secure the proper conduct of the proceedings. They stressed that the court of three instances considered that the applicant's continued detention had been necessary in order to prevent him from evading justice and tampering with evidence.

46. Furthermore, the Government maintained that the Section for the Organised Crimes of the Gdańsk Regional Public Prosecutor's Office had acted with the requisite diligence in the course of the pre-trial investigation which lasted from 28 January 1999 to 10 May 2001. They submitted that the case had been extremely complex on account of the number of suspects, the scale of their criminal activities and the need to obtain extensive evidence, including voluminous expert evidence. They added that it had also been necessary to carry out several reconstructions of the crimes. Moreover, some of the suspects had to be searched for throughout most of the period of the investigation (the two last suspects had been detained in January 2001).

47. The Government further stressed that the Gdańsk Regional Court likewise had shown due diligence in the course of the trial. They submitted that hearings had been regularly and frequently fixed. Initially, the trial court had held three hearings per month, and subsequently that number had been increased to five. In the Government's submission, the trial court could not hold more than five hearings per month due to technical reasons. They also argued that the trial was additionally complicated on account of the fact that one of the defendants had been simultaneously tried before the Bydgoszcz Regional Court. That fact necessitated coordination between the Bydgoszcz Regional Court and the trial court.

48. The Government maintained that the defendants had significantly contributed to the length of the trial. They submitted that the defendants, including the applicant, had repeatedly requested the trial court to adjourn the trial, to return the case to the prosecution authorities for additional investigation or to transfer the case to another court. The Government stressed that, due to the obstructive attitude of the defendants, the trial court could only begin to hear evidence in April 2003. They referred in that respect to the decision of the Court of Appeal of 23 June 2004 which had observed that the main reason for the delays in the proceedings until April 2003 had been the obstructiveness of the defendants and the abuse of the rights of the defence. The Government also submitted that the defendants had made numerous applications to challenge the trial court. In

the Government's view the defendants' behaviour justified the conclusion that they had resorted to delaying tactics.

49. The Government further submitted that from April 2003 to September 2004 the trial court had heard more than 200 witnesses.

50. The applicant argued that the length of his detention had been unreasonable.

(b) The Court's assessment

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

51. 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* [GC], no. 30210/96, §§ 110-111 with further references, ECHR 2000-XI).

52. 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 requirement 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, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

53. 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. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

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

54. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on four principal grounds, namely (1) the serious nature of the offences with which the applicant had been charged, (2) the severity of penalty to which he was liable (3) the risk of pressure being brought to bear on witnesses or obstructing the proceedings by other means and (4) the need to obtain extensive evidence (see paragraphs 6,8,9,10,12,14,17,19,22 and 24 above). Furthermore, the Government stated that the particular complexity of the case additionally justified the applicant's detention.

55. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences may initially have warranted his detention. In addition, it considers that the authorities were faced with a difficult task of determining the facts and the degree of alleged responsibility of each of the defendants, who had been charged with acting in an organised criminal group. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new suspects had been identified, constituted relevant and sufficient grounds for the applicant's detention during the time necessary to terminate the investigation, to draw the bill of indictment and to hear evidence from the accused.

56. However, with the passage of time those grounds inevitably became less and less relevant. In particular, even if the Court were to accept that the defendants, including the applicant, had contributed to certain delays during the trial by making use of their procedural rights, the Court considers that those grounds could not justify the entire period of the applicant's detention. In that connection, the Court underlines that the Government did not refer to any particular act of obstruction of the trial by the applicant. It must then establish whether the other grounds advanced by the judicial authorities were "relevant" and "sufficient" to continue to justify the deprivation of liberty.

57. The Court notes that the judicial authorities also relied on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue (see paragraphs 8, 12 and 14 above). 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). In the circumstances of the present case, the Court finds that the severity of the anticipated penalty alone, or in conjunction with the other

grounds relied on by the authorities, cannot constitute a “relevant and sufficient ground” for holding the applicant in detention for a considerably long period of nearly 4 years and 1 month.

58. As regards the risk of pressure being brought to bear on witnesses or of the obstruction of the proceedings by other unlawful means, the Court is not persuaded that they constituted valid grounds for the applicant's pre-trial detention in its entire length. Firstly, it notes that the Gdańsk District Court, when originally remanding the applicant in custody, held that the risk of pressure on witnesses was justified by the fact that the applicant had not made admissions (see paragraph 6 above). In the Court's view such reasoning of the District Court showed a manifest disregard for the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of liberty. Secondly, the Court observes that the judicial authorities appeared to presume the risk of pressure on witnesses or the obstruction of the proceedings based on the fact that the applicant had been a member of an organised criminal group. It notes however that the relevant decisions did not put forward any argument capable of showing that these fears were well-founded. The Court considers that such a generally formulated risk flowing from the nature of the applicant's criminal activities may possibly be accepted as the basis for his detention at the initial stages of the proceedings. Nevertheless, in the absence of any other factor capable of showing that the risk relied on actually existed, the Court cannot accept that ground as a justification for holding the applicant in custody for the entire relevant period.

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 v. Poland*, no. 33492/96, § 83, 21 December 2000).

60. In the present case the Court notes that during the entire relevant period the applicant was kept in detention, and despite his applications for release on bail, the authorities never envisaged any other guarantees of his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraph 29 above). What is more, it is not apparent 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. The foregoing considerations are sufficient to enable the Court to conclude that the grounds given for the applicant's pre-trial detention were not "sufficient" and "relevant" to justify holding him in custody for nearly 4 years and 1 month.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

65. 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.

66. The Court considers 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 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 1,000 under this head.

B. Costs and expenses

67. The applicant did not submit any claim in respect of costs and expenses.

C. Default interest

68. 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. *Declares* the application admissible;
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 in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one 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 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President