



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

FOURTH SECTION

CASE OF KANKOWSKI v. POLAND

(Application no. 10268/03)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Kankowski 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. 10268/03) 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 Adam Kankowski ("the applicant"), on 20 March 2003.

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. 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 declared the application partly inadmissible and decided to communicate the complaint concerning the excessive length of pre-trial detention 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 1974 and lives in Reda, Poland.

5. On 27 January 1999 the applicant was arrested by the police on suspicion of having committed armed robbery. On 29 January 1999 the Tczew District Court (*Sąd Rejonowy*) ordered that he be detained on remand in view of the reasonable suspicion that he had committed the offence in question, the severity of the anticipated penalty and the fear that he might tamper with evidence. The court also observed that other measures designed to secure the proper conduct of the proceedings would be insufficient, given the fact that at the time of the commission of the offence the applicant had already been released under police supervision in another case. That, in the court's opinion, convincingly showed that only detention could prevent him from committing another offence.

6. On 20 April 1999 the Gdańsk Regional Court prolonged the applicant's detention. It reiterated the grounds originally given for his detention. Referring to the fact that more lenient preventive measures had not prevented the applicant from having committed another offence, the court considered that there was a reasonable risk that the applicant would abscond. Furthermore, it considered that since the applicant had not admitted the charge and that there had been other persons involved in the offence who had remained at large, there was a reasonable risk of collusion.

7. In the course of the investigation, the applicant's detention was several times prolonged by the Gdańsk Court of Appeal (*Sąd Apelacyjny*). The court reiterated the grounds originally given for his detention and stressed that keeping him in custody was necessary to secure the process of obtaining evidence. The relevant decisions were given on 21 July 1999 (prolonging the applicant's detention until 31 December 1999) and 8 December 1999 (prolonging his detention until 27 January 2000). The applicant's appeals against those decisions – in which he contested the reasonableness of the charge against him – were rejected by the Supreme Court (*Sąd Najwyższy*).

8. On 21 January 2000 the Supreme Court prolonged the applicant's detention – which had meanwhile exceeded the 1 year's time-limit set for detention pending the investigation under Article 263 § 2 of the Code of Criminal Procedure – until 30 April 2000. It considered that the case was “particularly complex” within the meaning of Article 263 § 4 of the Code.

9. On 30 March 2000 the Supreme Court prolonged his detention until 30 June 2000. On 24 May 2000 the Supreme Court ordered that that term should further be prolonged until 15 December 2000. The court reiterated the previous grounds given for the applicant's detention and added that the case was very complex, given that 6 further suspects had in the meantime been charged and detained in the case and that several other potential suspects were still being searched for.

10. In the meantime, new charges were laid against the applicant.

11. Further prolongation of the applicant's detention pending the investigation were ordered by the Gdańsk Court of Appeal on 13 December

2000 (up to 31 March 2001) and on 7 March 2001 (up to 31 May 2001). In its decision of 13 December 2000, the Court of Appeal relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the severity of anticipated penalty. It also considered that there was a reasonable risk that the applicant and the other 8 detained co-suspects, if released, might obstruct the proceedings or attempt to evade justice, having regard to the nature and the scale of the offences with which they had been charged (numerous counts of armed robberies) and the number of suspects involved. In its decision of 7 March 2001, the Court of Appeal added that the prolongation of detention was justified by the need to obtain DNA evidence.

12. On 15 May 2001 the Gdańsk Regional Prosecutor (*Prokurator Okręgowy*) indicted the applicant on 48 charges comprising, among other things, numerous counts of armed robbery before the Gdańsk Regional Court (*Sąd Okręgowy*). The bill of indictment listed 120 charges brought against 19 accused, who were all remanded in custody. The case-file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses. It appears that the principal witness was a certain A.Ł., who had been indicted together with all the defendants but gave evidence against them.

13. 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.

14. During the trial, the Gdańsk Court of Appeal prolonged the applicant's detention several times. The relevant decisions were given on 23 May 2001 (extending his detention up to 31 October 2001), on 24 October 2001 (ordering his continued detention until 31 March 2002), on 13 March 2002 (prolonging that period until 30 September 2002), 11 September 2002 (extending his detention until 31 December 2002), on 18 December 2002 (prolonging his detention until 30 June 2003), on 25 June 2003 (prolonging his detention until 31 December 2003), on 17 December 2003 (extending that term until 30 June 2004), on 23 June 2004 (extending that term until 31 December 2004), on 15 December 2004 (ordering his continued detention until 31 March 2005) and on 30 March 2005 (extending that period until 30 June 2005). As at the latter date, 8 of the 19 accused were still detained on remand and the trial court had heard most of the prosecution witnesses.

15. In all those decisions the Court of Appeal considered that the original grounds given for the applicant's detention were still valid. It stressed that keeping him in custody was necessary in order to prevent him – and his co-defendants – from evading justice or tampering with evidence.

16. In its decision of 13 March 2002, the Court of Appeal found that holding the applicant and his 7 co-defendants in custody was the only measure which would prevent them from obstructing the trial, having regard to the nature of the offences in question, the severity of the anticipated

penalty and the fact that such attempts had been made in the course of the investigation. It also instructed the trial court to increase the number of hearings held per month.

17. In its decision of 11 September 2002, the Court of Appeal considered that the applicant's detention was justified under Article 258 § 2 of the Code of Criminal Procedure since that provision 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.

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

19. 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.

20. The applicant repeatedly, but unsuccessfully, asked for release and appealed against the decisions prolonging his detention. He maintained that the length of his detention was unreasonable and contested the charges against him, stressing that they were based on unreliable evidence from A.Ł.

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

B. The prison term

22. From 9 March 2000 to 15 April 2002 and from 21 June 2002 to 31 July 2002 (i.e. for 2 years, 2 months and 17 days) the applicant served a sentence of imprisonment imposed in other criminal proceedings. He was, however, simultaneously remanded in custody in the present case.

II. RELEVANT DOMESTIC LAW

23. 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*).

24. 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.”

25. 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.”

26. 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.”

27. 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.”

28. 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.

29. 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.”

30. 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

31. 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.”

32. The Government contested that argument.

A. Admissibility

33. 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

34. The Court observes that the applicant was arrested on 27 January 1999 and detained on remand on 29 January 1999. 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 and 7 months.

35. However, the Court notes that from 9 March 2000 to 15 April 2002 and from 21 June 2002 to 31 July 2002 the applicant served a sentence of imprisonment imposed in other criminal proceedings. It 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 9 March 2000 to 15 April 2002 and from 21 June 2002 to 31 July 2002 must be subtracted from the total period of the applicant's detention since during that time was serving a prison sentence resulting from another conviction.

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

2. The reasonableness of the length of detention

(a) The parties' arguments

37. The Government argued that the length of the applicant's detention had been reasonable and duly justified in its entire period. They relied firstly on the existence of serious suspicion that the applicant had committed the offences in question.

38. Furthermore, the Government referred to the gravity of the charges against the applicant and the severity of anticipated penalty. They argued that the likelihood that a severe penalty would be imposed could induce the applicant 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.

39. Furthermore, the Government referred to the findings of the domestic court which had held that more lenient preventive measures imposed on the applicant in another set of criminal proceedings against him had failed to prevent him from obstructing the proceedings and committing other offences.

40. The Government underlined that 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 also submitted that the prolongation of the detention beyond the statutory time-limit of 2 years had been justified under Article 263 § 4 of the Code of Criminal Procedure by the particular complexity of the case and the need to obtain extensive evidence.

41. The Government maintained that the defendants had repeatedly requested the trial court to adjourn the trial (including on health grounds), to return the case to the prosecution authorities for additional investigation or to transfer the case to another court. They submitted that at the hearing held on 23 September 2002 the applicant had declared that he was unable to follow the hearing due to the dizziness; however the doctor who had examined the applicant, considered that there had been no obstacle to the applicant's participation in the hearing.

42. 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' actions justified the conclusion that they had resorted to delaying tactics.

43. Lastly, they argued that both the prosecuting authorities and the courts had displayed the requisite diligence in the present case.

44. The applicant submitted that his detention had been inordinately lengthy. He argued that an excessive period of detention, as in the present case, was in itself incompatible with Article 5 § 3 of the Convention, given the principle of the presumption of innocence.

45. The applicant maintained that, however strong had been the suspicion against him, it could suffice as a basis for holding him in custody only at an early stage of the proceedings. He accepted that the need to secure the proper conduct of the proceedings had justified his detention as long as the evidence had not been obtained. However, he added that with the passage of time that ground became less and less relevant.

46. The applicant emphasised that, during the entire period of his detention, the authorities had not considered the possibility of imposing on him other preventive measures, such as bail or police supervision.

47. As regards the risk of absconding, the applicant submitted that it had not been based on any reliable evidence, and that with the passage of time, it had become irrelevant from the point of view of the proper conduct of the trial.

(b) The Court's assessment

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

48. 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).

49. 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).

50. 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

51. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on four principal grounds, namely (1) the severity of penalty to which he was liable, (2) the serious nature of the offences with which he had been charged, (3) the risk of absconding and tampering with evidence and (4) the complexity of the case

and the need to obtain extensive evidence (see paragraphs 5-9, 11, 15-17 above). Additionally, the Gdańsk Regional Court in its decision of 20 April 1999 had relied on the reasonable risk of collusion (see paragraph 6 above).

52. 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 together with the complexity of the investigation, 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.

53. 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 at 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. The Court is of the view that this conclusion remains valid, despite the Government's argument that the applicant had attempted to obstruct the trial hearing held on 23 September 2002 (see paragraph 41 above). 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.

54. 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 5, 11, 16 and 17 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 over 4 years and 5 months.

55. As regards the risk of absconding and tampering with evidence, the Court cannot accept that they constituted relevant and sufficient grounds for the entire length of the applicant's detention.

56. Firstly, it observes that at a very early stage of the investigation the judicial authorities considered that the imposition of detention had been necessary in order to prevent the applicant from tampering with evidence, absconding and re-offending. They had relied on the fact that the more lenient preventive measure (police supervision) imposed on the applicant in another case against him had been inadequate (see paragraphs 5 and 6 above). The Court accepts that at the relevant time the authorities had a valid reason to consider that the risk relied on could materialise. However, it cannot but note that in their decisions, following the decision of the Gdańsk Regional Court of 20 April 1999, the judicial authorities did not refer to the fact that the applicant had breached the preventive measure imposed on him in another set of proceedings. Thus, the Court concludes that the risk of absconding and tampering with evidence could not be justified by reference to that latter fact.

57. In respect of the subsequent period, the Court observes that the judicial authorities appeared to presume the risk of absconding and tampering with evidence on account of the likelihood of a severe penalty being imposed on the applicant and the nature of the offences in question (see paragraph 17 above). It notes however that the decisions referring thereto 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 offences with which the applicant had been charged 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 those grounds as a justification for holding the applicant in custody for the entire relevant period.

58. Lastly, as regards the risk of collusion the Court notes that the judicial authorities relied on that risk only in the decision of the Regional Court of 20 April 1999. Thus, the Court cannot see how that risk could justify the entire length of the applicant's detention.

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 period of the applicant's detention, except for the initial period covered by the decisions of the Tczew District Court of 29 January 1999 and the Gdańsk Regional Court of 20 April 1999, and despite his applications for release, 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 23 above).

61. What is more, it is not apparent from the relevant decisions given after 20 April 1999 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. Nor did they mention any factor indicating that there was a real risk of his absconding or obstructing the proceedings. In that regard the Court would also point out that although such a potential danger may exist where an accused is charged with a serious offence and where the sentence faced is a long term of imprisonment, the degree of that risk cannot be gauged solely on the basis of the severity of the offence and anticipated sentence (see *Muller v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388., § 43).

62. 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 over 4 years and 5 months.

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

II. 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. Damage

65. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage and an unspecified amount in respect of pecuniary damage.

66. The Government argued that the applicant's claims should be rejected as excessive.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it 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

68. The applicant, who had been granted legal aid, also claimed EUR 1,500 for the costs and expenses incurred before the Court.

69. The Government argued that any award under this head should be limited to those costs and expenses that have been actually and necessarily incurred and are reasonable as to quantum.

70. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

71. 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 and EUR 500 (five hundred) in respect of costs and expenses, 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 amounts 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