



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

FOURTH SECTION

CASE OF CELEJEWSKI v. POLAND

(Application no. 17584/04)

JUDGMENT

STRASBOURG

4 May 2006

FINAL

04/08/2006

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 Celejewski 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 K. TRAJA,

Mr S.PAVLOVSKI,

Mr L.GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 4 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 17584/04) 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 Włodzimierz Celejewski (“the applicant”), on 23 April 2004.

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

3. On 19 April 2005 the President of the Fourth Section Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and is at present detained in the Częstochowa Detention Centre.

5. On 7 March 2002 the applicant was arrested by the police.

6. On 7 March 2002 the Kraków District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand in view of the reasonable suspicion that he had committed several crimes including kidnapping for ransom and extorting protection money. Later, six other persons were detained and charged in connection with the same set of crimes.

7. On 22 May 2002 the Kraków Regional Court (*Sąd Okręgowy*) prolonged the applicant's detention until 28 August 2002 considering that the strong suspicion against him of having committed the serious crimes with which he had been charged and the risk of going into hiding and tampering with evidence justified holding him in custody.

8. The applicant's detention on remand was prolonged on 13 August and 25 November 2002.

9. On 19 February 2003 the Katowice Court of Appeal (*Sąd Apelacyjny*) prolonged the applicant's detention on the grounds that there was a strong suspicion that he had committed the crimes in question, that a severe sentence of imprisonment might be imposed on him and that keeping him in custody was necessary to secure the proper course of the investigation.

10. On 7 May 2003 the Katowice Court of Appeal further prolonged the applicant's detention considering that the grounds originally given for remanding him in custody were still valid.

11. On 14 August 2003 the Katowice Regional Prosecutor (*Prokurator Okręgowy*) filed a bill of indictment against the applicant and nine other persons that comprised 41 charges. The applicant was indicted on charges of having committed in total thirteen offences, including three offences while acting in an organised group.

12. The applicant's detention was prolonged by the Katowice Regional Court on 25 August 2003. The court reiterated the grounds given previously for keeping him in custody and added:

"The strong probability that severe imprisonment may be imposed on [the applicant] creates a legal presumption that [the applicant and other accused] will obstruct the criminal proceedings."...

13. On an unspecified date the case was transferred to the Częstochowa Regional Court.

14. On 10 February 2004 the Częstochowa Regional Court made a request under Article 263 § 4 of the Code of Criminal Procedure in which it asked the Katowice Court of Appeal to extend the applicant's detention.

15. On 18 February 2004 the Katowice Court of Appeal allowed the request submitted by the Regional Court and prolonged the applicant's detention until 31 October 2004. In addition to the grounds previously given – the reasonable suspicion of his having committed the offences in question and the risk of a severe sentence – the court found that the complexity of the case justified the applicant's detention. The applicant's appeal was dismissed on 1 April 2004.

16. On 2 June 2004 the Katowice District Court decided to detain the applicant on remand in connection with another set of criminal proceedings against him. Subsequently, the applicant was indicted in this set of proceedings. The applicant's detention ordered in this set of proceedings had been prolonged on several occasions and the applicant remains detained on the order of this court.

17. On 22 October 2004 and 20 May 2005 the Katowice Court of Appeal further prolonged the applicant's pre-trial detention. In the latter decision the court examined the course of the trial and found that there were no delays and that the trial court had proceeded according to the schedule. The court pointed to the particular complexity of the case involving an organised group charged with numerous offences and the substantial amount of adduced evidence. On 16 June 2005 the applicant's appeal against this decision was dismissed.

18. On 26 October 2005 the Katowice Court of Appeal allowed another application of the Częstochowa Regional Court and prolonged the applicant's detention until 31 December 2005. The court reiterated the reasons invoked on the previous occasions.

19. The applicant submits that he was not informed about the majority of the scheduled court sessions at which his detention on remand was prolonged, therefore he could not attend them.

20. On 20 December 2005 the Częstochowa Regional Court gave judgment. The applicant was convicted and sentenced to fourteen years' imprisonment.

21. It appears that he lodged an appeal against the judgment and that the appellate proceedings are pending.

II. RELEVANT DOMESTIC LAW

1. Preventive measures, including detention on remand

22. 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*).

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

"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 evidence gathered shows a significant probability that an accused has committed an offence."

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 justified fear 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."

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."

Article 259, in its relevant part, read:

"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."

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.

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, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly

complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

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.

2. Prolongations of the detention

23. Article 249 § 3 reads:

“Before deciding on the application of the preventive measures, the court or the prosecutor shall hear the person charged with offence... The lawyer of the detainee should be allowed to attend the court session, if he or she is present. It is not mandatory to inform the lawyer of the date and time of the court session, unless the suspect so requests and if it will not hinder the proceedings.”

Article 249 § 5 provides:

“ The court shall inform the lawyer of a detained person of the date and time of court sessions at which a decision is to be taken concerning prolongation of detention on remand, or an appeal against a decision to impose or to prolong detention on remand is to be considered.”

THE LAW

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

24. The applicant complained that the length of his detention on remand had been unreasonable. 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.”

25. The Government contested that argument.

A. Admissibility

26. The Court notes that this complaint 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. Arguments before the Court

27. The applicant submitted in general terms that his application lodged with the Court was justified. He argued that keeping him in pre-trial detention for such a lengthy period of time had violated his human rights and the Convention.

28. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They pointed to the fact that as from 2 June 2004 the applicant has been detained simultaneously in connection with two pending criminal proceedings against him. The Government submitted that his pre-trial detention was duly justified and that during the entire period the authorities had given relevant and sufficient reasons for prolonging it. In this connection they stated:

“Although not expressly mentioned in every decision refusing the applicant's release, these circumstances of the applicant's case were duly taken into account by the prosecution and judicial organs while finding that only detention on remand could secure the proper course of the proceedings conducted against the applicant.”

29. The Government further submitted that the domestic courts acted diligently and speedily, in particular taking into account the complexity of the case, directed against nine co-accused, in which the charges comprised altogether 41 offences.

2. The Court's assessment

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

30. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. 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 (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI)

31. 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 examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set

them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned 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 of the Convention.

32. 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 judicial 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, § 153, ECHR 2000-IV, and *Jablonski v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

33. The Court first notes that the applicant complains about the set of proceedings in which he was detained on remand on 7 March 2002. On 20 December 2005 the Regional Court gave judgment in this case. Consequently, the period to be taken into consideration lasted 3 years, 9 months and 15 days.

34. The Court observes that in the present case the authorities initially relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, a risk that he might go into hiding or interfere with the conduct of the proceedings. In addition to that, the authorities heavily relied on the severity of the anticipated sentence, which according to them created “a legal presumption that the applicant and other accused will obstruct the criminal proceedings” (see paragraph 12 above). They repeated those grounds in all their decisions. The domestic courts also considered that in view of the complexity of the case, which concerned an organised criminal group, the applicant’s detention was necessary to secure the proper conduct of the proceedings.

In subsequent decisions, the authorities failed to advance any new grounds for prolonging the most serious preventive measure against the applicant. The Court notes that on 2 June 2004 the applicant had been detained in connection with another set of criminal proceedings. However, on the basis of the material in its possession, the Court is unable to establish whether in the second set of proceedings the authorities had invoked any new grounds justifying the applicant’s detention.

35. The Court accepts that the suspicion against the applicant of having committed the offences might initially have justified his detention, in particular, in the light of the fact that the applicant was subsequently sentenced to fourteen years’ imprisonment.

36. In addition, the judicial authorities appeared to presume the risk of pressure on witnesses or obstruction of the proceedings based on the severity of the anticipated penalty given the serious nature of the offences at issue (see paragraphs 7, 9, 12 and 33 above). In this respect, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (*Górski v Poland*, no. 28904/02, § 57, 4 October 2005). The Court also 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 *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

37. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal group. In this regard, the Court considers that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (*Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention. It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. In these circumstances, the Court considers that the need to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-defendants, constituted relevant and sufficient grounds for the applicant's detention during the period necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused. Moreover, the Court considers that in cases such as the present concerning organised criminal groups, the risk that a detainee if released might bring pressure to bear on witnesses or other co-accused, or might otherwise obstruct the proceedings, is in the nature of things often particularly high.

38. All the factors considered above could justify a relatively longer period of detention on remand, however, they do not give the authorities unlimited power to prolong this preventive measure. Firstly, with the passage of time, the initial grounds for pre-trial detention become less and less relevant and the domestic courts should rely on other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see, among many other authorities, *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 102; *Labita v. Italy* [GC], cited above, § 153). Secondly, even if due to the particular circumstances of the case, detention on remand is extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be required to justify this.

In the circumstances of the present case, the Court finds that with the passage of time, the severity of the anticipated penalty, alone or in conjunction with other grounds relied on by the authorities, cannot be accepted as sufficient justification for holding the applicant in detention for a very long period of nearly 4 years.

39. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative measures of ensuring his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jablonski*, cited above, § 83).

In the present case the Court notes that there is no express indication that during the entire period of the applicant’s pre-trial detention the authorities 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, even if in the particular circumstances of the case other preventive measures might have been less appropriate.

40. The Court concludes, even taking into account the particular difficulty in dealing with a case concerning organised criminal group, that the grounds given by the domestic authorities were not “sufficient” and “relevant” to justify the applicant’s being kept in detention for 3 years, 9 months and 15 days.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

41. The applicant complained about the procedure relating to prolongation of his pre-trial detention, in particular, that he could not attend the sessions at which his detention was prolonged. The Court will examine this complaint under Article 5 § 4 of the Convention.

Article 5, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

42. The Government submitted that according to Article 249 §1 of the Code of Criminal Procedure, the lawyer of the accused is notified of the court’s sessions on which the detention on remand was prolonged and is entitled to take part in them. The Government maintained that the applicant’s lawyer was summoned to those sessions, although he chose not to attend some of them. Furthermore, the Government stressed that the applicant appeared in person at the hearings held since February 2004 during which he could personally request his release. They submitted, that taking into consideration all available proceedings concerning review of the lawfulness of the pre-trial detention, the principles guaranteed in Article 5 § 4 of the Convention were respected in the present case.

43. The Court reiterates the following principles which emerge from the Court’s case law on Article 5 § 4, so far as relevant in the present case:

(a) Article 5 § 4 of the Convention entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty (see, among many others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).

(b) Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162, and *Wloch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI, both with reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).

(c) The proceedings must be adversarial and must always ensure “equality of arms” between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1(c) a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Assenov and Others*, cited above, § 162, with references to *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30-31; *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107, p. 19, § 51; and *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47).

(d) Furthermore, Article 5 § 4 requires that a person detained on remand be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention (see *Assenov and Others*, cited above, p. 3302,

§ 162, with a reference to *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, pp. 10-11, §§ 20-21).

44. The Court observes that under the law on criminal procedure detention on remand is ordered by a decision of a court, given at the prosecutor's request. The 1997 Code of Criminal Procedure entitles both the person in respect of whom such a request had been issued, and his lawyer, to attend the court session held in the judicial proceedings. The court is obliged to hear the suspect in order to establish whether, in the light of the evidence gathered by the prosecution and the arguments advanced by the suspect, there are sufficient grounds for believing that there is a reasonable suspicion that he committed the offence in question.

45. The Court observes that in the case under consideration the applicant was remanded in custody by the decision of 7 March 2002 given by the Krakow District Court. The applicant acknowledged that the court issued the detention order having held a session in his presence, as required by the law in force at the material time. It was open to him to lodge an appeal against this decision, although it is not clear whether the applicant used this opportunity to contest the detention order.

46. The Court further notes that, in proceedings concerning the prolongation of pre-trial detention, the courts are also under an obligation set out by Article 249 § 5 of the Code of Criminal Procedure to inform the lawyer of a detained person of the date and time of court sessions at which a decision is to be taken concerning prolongation of detention on remand, or an appeal against a decision to impose or to prolong detention on remand is to be considered (see paragraph 23 above). It is open to the lawyer to attend such session. In this connection the Court observes that in the present case there is no evidence that the courts departed from the normal procedure and that the applicant's lawyer was not duly summoned to the court sessions. Moreover, the applicant has not advanced any argument that his defence, while it was assured by a court-appointed lawyer or at any other stage, was inadequate.

In view of the above, the Court is of the opinion that the proceedings in which the prolongation of his detention was examined satisfied the requirements of Article 5 § 4 (see, *Telecki v Poland*, (dec) no. 56552/00, 3 July 2003).

47. There are therefore no grounds on which to find that the proceedings, concerning the review of the lawfulness of the applicant's detention, examined as a whole, fell short of the requirements of this provision of the Convention.

48. It follows that this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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. Non-pecuniary damage

50. The applicant did not claim any particular sum in respect of non-pecuniary damage. However, he asked the Court to award him just-satisfaction for his and his family’s suffering.

51. The Government asked the Court to hold that finding of a violation would in itself constitute sufficient just-satisfaction.

52. 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 1000 euros (EUR) under this head.

B. Pecuniary damage and costs and expenses

53. The applicant claimed in total about 15 000 Polish zlotys (PLN) in respect of pecuniary damage and for costs and expenses incurred before the domestic courts.

54. The Government submitted that the applicant’s claims were excessive and irrelevant for the case.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As regards the claim for costs and expenses, 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim.

C. Default interest

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the unreasonable length of detention admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* by six votes to one
 - (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, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the settlement;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion of Mr Pavlovski is annexed to this judgment.

N.B.
F.E.P.

DISSENTING OPINION OF JUDGE PAVLOVSHI

On 4 April 2006 the Fourth Section, having examined the case of Celejewski against Poland, found a violation of Article 5 § 3 of the Convention.

I regret very much that I cannot agree with the majority's decision in the present case. In my opinion, despite the fact that the applicant had spent quite a considerable period of time in pre-trial detention, there was no violation of the above-mentioned provision of the Convention.

In my view, the case before us is a border-line case which required more careful examination.

The applicant spent in pre-trial detention 3 years and 9 months, which, at first sight, seems to be excessive. But this is only at first sight. A slightly more attentive examination of the situation would show that in the particular circumstances of the present case this term was not excessive at all.

According to the Government's observations, the applicant had a previous criminal record. On 6 March 1998 he was sentenced to 5 and a half years of imprisonment for armed robbery and stayed in prison till 5 October 1999, when he was released as he started to co-operate with the Central Bureau of Investigation. However, once liberated, the applicant started to organise his own criminal gang.¹

The applicant was detained on remand on 7 March 2002 in view of reasonable suspicion that he had committed several crimes including kidnapping for ransom and extorting protection money.²

On 14 August 2003 the Katowice Regional Prosecutor filed a bill of indictment against the applicant and nine other persons that comprised 41 charges. The applicant was indicted on 13 separate counts, all concerning offences, including three serious crimes, committed when acting in an organised group.

On 2 June 2004 the Katowice District Court decided to detain the applicant pending trial in connection with another set of criminal proceedings against him. Subsequently, the applicant was indicted in this set of proceedings too.

On 20 December 2005 the Częstochowa Regional Court gave judgment. The applicant was convicted and sentenced to 14 years imprisonment.

It is not clear from the material at our disposal when the applicant's case was transmitted for the court's consideration, but it was not later than 17 October 2003, when according to the Government's observations this case was sent to the Częstochowa Regional Court. That means that the preliminary investigation in the present case was finalised within 19 months. During this period of time the Polish authorities had managed to

¹ See the Government's observations, pages 1-2

² See the present judgment, paragraph 6

collect evidence about 41 offences believed to have been committed by 10 accused persons operating in the regions of Silesia and Małopolska between October 2000 and March 2001.³

Taking into consideration the impressive volume of work done by the investigative authorities in the present case, I fail to understand why the majority did not take it into consideration. In my personal view, 19 months for such a huge amount of investigative work could indeed be considered a record, and it would be unfair to criticise the Polish authorities for that.

As far as the judicial examination of the case is concerned, it took another period of 26 months to have the criminal charges against the applicant determined.

On 22 October 2004 and 20 May 2005 the Katowice Court of Appeal further prolonged the applicant's detention. In the latter decision the court examined the course of the trial and found that there had been no delays and that the trial had proceeded according to the schedule. The court pointed to the particular complexity of the case involving the organised group charged with numerous offences and the substantial amount of evidence adduced.

Indeed, it seems that, in his complaint the applicant did not substantiate any period of unjustified inactivity by the courts which in theory could have been attributed to the Polish authorities.

Moreover, as can be seen from the Government's objections – which, it seems, were not questioned by the applicant – a substantial part of the length of the judicial examination of the applicant's case is attributable to the applicant himself as well as to his lawyer.

For example, on 18 March 2005 the applicant filed a request for remission of the case to the prosecutor “to complete the proceedings by presentation of the new charge of Article 258 § 3 of the Criminal Code”. On 22 March 2005 he filed a request for confrontation between the co-accused M.B. and a witness A.Z. On 28 June 2005 he formulated four new requests for evidence and so on and so forth.⁴

In my view, the period of 26 months for the judicial examination of the case against the applicant and 9 other persons, charged with 41 offences, committed in different regions of Poland, with no unjustified delays, regularly scheduled and held hearings, and in conditions where the applicant himself contributed to the prolongation of the trial cannot be regarded as an excessively long period requiring the international protection of the applicant's rights under Article 5 §3.

Taking into consideration the applicant's previous criminal record, the seriousness of the charges against him, the number of offences he was charged with, as well as all the above reasons, combined with the fact that while prolonging the applicant's detention the national judicial authorities

³ see the Government's observations, page 2

⁴ see the Government's observations, page 4

had regularly given new grounds justifying and explaining their decisions, I consider that in this case there were “relevant” and “sufficient” reasons for the applicant’s detention and that the Polish authorities did exercise the special diligence they are expected to observe in such cases.

Moreover, the heavy sentence - 14 years of imprisonment - inflicted on the applicant for his criminal activity, unlike in the case of *Dudek v. Poland*⁵, objectively justifies both the seriousness of the suspicions and the charges against him and the existence of the evidence backing them.

To conclude, I consider that in the case before us there has been no violation of the applicant’s rights under Article 5 §3 of the Convention.

⁵ see Dissenting opinion in the case of *Dudek v Poland*