CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KOZIK v. POLAND

(Application no. 25501/02)

JUDGMENT

STRASBOURG

18 July 2006

FINAL

18/10/2006

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 Kozik 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. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 25501/02) 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 Roman Kozik ("the applicant"), on 17 July 2001.

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

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the excessive length of the applicant's 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Goleniów, Poland.

5. On 19 June 2000 the applicant was arrested on suspicion of killing D.L., his fiancée.

6. On 20 June 2000 the Świnoujście District Court (*Sąd Rejonowy*) ordered his detention. It considered that placing the applicant in custody was justified by the existence of strong evidence against him and the gravity of

the charges. Since he had attempted to flee, his detention was necessary to ensure the proper course of the proceedings.

7. The applicant's detention was subsequently prolonged several times by the Szczecin Regional Court (*Sąd Okręgowy*). Each time the court repeated the reasons it had previously given.

8. On 1 March 2001 the applicant lodged an application for release with the Świnoujście District Prosecutor (*Prokurator Rejonowy*). The prosecutor dismissed the application on 7 March 2001.

9. On 26 April 2001 the Świnoujście District Prosecutor lodged a bill of indictment with the Szczecin Regional Court. The applicant was charged with murder (he had strangled his fiancée) and fraud.

10. On 30 January 2002 the Szczecin Regional Court convicted him as charged and sentenced him to 15 years' imprisonment.

11. The Poznań Court of Appeal quashed that judgment and remitted the case on 14 May 2002.

12. The applicant remained in custody.

13. On 13 June 2002 the Poznań Court of Appeal (*Sąd Apelacyjny*) ordered that the applicant remain in detention until 30 September 2002.

14. On 19 June 2002 the court refused his application for release.

15. Subsequently, the applicant's detention was extended every 3 months by the Szczecin Regional Court, for the same reasons as before.

16. The applicant lodged numerous unsuccessful applications for release with the Regional Court.

17. On 7 October 2004 the Szczecin Regional Court convicted the applicant of murder and sentenced him to 25 years' imprisonment. The court stressed the depraved nature of the crime and maintained that there were no mitigating circumstances in the case.

18. The Poznań Court of Appeal upheld the first-instance judgment on 29 December 2004.

19. On 20 October 2005 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's cassation appeal.

RELEVANT DOMESTIC LAW AND PRACTICE

20. 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 on leaving the country (*zakaz opuszczania kraju*).

21. 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."

22. 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."

23. 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."

24. 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."

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.

25. 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. The court of appeal within whose jurisdiction the offence in question has been committed 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."

THE LAW

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

26. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention was excessive. Article 5 § 3 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."

A. Admissibility

27. 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

28. The Court observes that the applicant's detention lasted from 19 June 2000 until 30 January 2002 (when he was convicted for the first time) and from 14 May 2002 (when the first-instance judgment was

quashed) until his second conviction on 7 October 2004. The overall period of the applicant's detention amounted therefore to approximately 4 years.

2. The reasonableness of the length of detention

(a) The parties' arguments

29. The Government maintained that the length of the applicant's detention was not excessive. In their opinion, there had been valid reasons for holding him in custody for the entire period in question. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of the charges and the heavy penalty which could be expected. There was also a serious risk of the applicant's absconding, since he had attempted to do so before his arrest. The Government drew attention to the fact that the applicant was not a first offender.

30. They argued that the case was exceptionally complex, but the authorities nevertheless showed due diligence in dealing with it.

31. The Government stressed that the applicant's detention had been subject to frequent and thorough review by the domestic courts. All decisions concerning his custody were reasoned in full.

32. In conclusion, they maintained that there had been no breach of Article 5 § 3.

33. The applicant generally contested the Government's arguments

(b) The Court's assessment

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

34. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

35. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

36. The persistence of a 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 (see, among other authorities, *Jabłoński v. Poland,* no. 33492/96, § 80, 21 December 2000).

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

37. The Court notes that the domestic courts in prolonging the applicant's detention relied in particular on the reasonable suspicion that he had committed the offence with which he had been charged, its serious nature and the length of the sentence which could be imposed on him. However, the Court has repeatedly held that these grounds cannot by themselves serve to justify long periods of detention on remand (see, among other authorities, *Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001).

38. Furthermore, the judicial authorities held that there was the danger that the applicant, if released, might abscond. They referred to the fact that the applicant, before his arrest, had attempted to abscond. The Court agrees that the applicant's attempt to obstruct justice justified keeping him in custody at the initial stages of the proceedings. However, it considers that this ground gradually lost its relevance as the trial proceeded. Moreover, given the absence of any further attempt on the part of the applicant to obstruct the course of the proceedings in any way, it is difficult to accept that the single incident before his arrest justified keeping him in custody for the entire period of 4 years.

39. The Court cannot but note that the authorities had not deliberated on the possibility of imposing on the applicant measures other than detention expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings (see paragraphs 22-24 above).

40. In that context, the Court would reiterate 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 the *Jabłoński v Poland* judgment cited above, § 83).

41. In the circumstances, the Court concludes that the grounds stated in the impugned decisions were not sufficient to justify the applicant's being kept in detention for a period of over 4 years.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 500,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

45. The Government considered that the sum claimed by the applicant was excessively high. They asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

46. In cases which concerned similar violations of Article 5 § 3, the Court has declined to make any award under Article 41, considering that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage suffered (see, among many other authorities, *Świerzko v. Poland*, no. 9013/02, § 38, 10 January 2006, with further references).

47. In the present case, the Court does not find any reason to depart from that principle. Consequently, it concludes that the pecuniary and non-pecuniary damage claimed by the applicant is adequately compensated by the finding of a violation of Article 5 § 3.

B. Costs and expenses

48. The applicant did not seek reimbursement of any costs and expenses.

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* that the finding of a violation of Article 5 § 3 constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 18 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President