CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TRZCIAŁKOWSKI v. POLAND

(Application no. 26918/02)

JUDGMENT

STRASBOURG

28 November 2006

FINAL

28/02/2007

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 Trzciałkowski 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 7 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 26918/02) 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 G. Trzciałkowski ("the applicant").The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw.

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

3. On 8 November 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the 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

4. The applicant was born in 1975 and lives in Warsaw.

5. On 7 January 2000 he was arrested and placed in police custody.

6. On 9 January 2000 the Wołomin District Court ordered that the applicant be detained for three months on suspicion of having committed fraud as a result of which third parties had disposed of their property, valued at 362,840 zlotys (PLN), to their detriment. The court based its detention

order on a reasonable suspicion that the applicant had committed the offence and on the severity of the likely penalty, which gave rise to a fear that the applicant would obstruct the proceedings.

7. On an unknown date the applicant lodged an appeal against this decision. On 25 January 2000 the Warsaw Regional Court dismissed his appeal.

8. Subsequent decisions as to the extension of the applicant's pre-trial detention were taken on 31 March, 27 June, 29 August and 7 December 2000 and on 13 March 2001.

9. On 29 May 2001 a bill of indictment against the applicant and one other suspect was lodged with the Wołomin District Court. The applicant was charged with fraud as a result of which third parties had disposed of their property, valued at PLN 362, 840, to their detriment.

10. Subsequent decisions as to the extension of the applicant's pre-trial detention were taken on 8 June 2001, 23 August 2001, 3 October 2001, 25 October 2001, 6 December 2001, 27 March 2002, 25 June 2002, 30 August 2002 and 25 November 2002.

11. In principle, in all the above-mentioned decisions the courts relied on the same grounds for detention as those given in the first detention order. In some the courts also referred to the complexity of the case, the need to conduct further investigation, the probable collusion between the applicant and other suspects (later: the co-accused) and the probable exertion of unlawful pressure on witnesses by the applicant. In particular, the courts indicated that a high risk of collusion existed since one of the suspects still remained at large and his whereabouts had not yet been established.

12. The applicant appealed against the decisions extending his detention on several occasions. All of his appeals were dismissed.

13. On 23 August 2001 the first hearing was held before the Wołomin District Court. Subsequent hearings were held on 13 September 2001, 3 October 2001, 25 October 2001, 6 December 2001, 19 December 2001, 17 January 2002, 24 January 2002, 22 February 2002, 6 March 2002, 22 March 2002, 3 April 2002, 18 April 2002, 8 May 2002, 28 June 2002, 19 September 2002, 27 November 2002, 18 December 2002, 16 January 2003 and 22 January 2003. At a hearing on 28 June 2002 the Wołomin District Court remitted the case to the Wołomin District Prosecutor so that shortcomings in the investigation could be corrected.

14. On many occasions the applicant requested that his detention pending trial be lifted or that a more lenient preventive measure be applied. Each time his request was dismissed. The decisions to that effect were given by the Wołomin District Court (on 9 February 2000, 19 October 2000, 6 November 20000, 21 November 2000, 18 June 2001, 21 July 2001, 1 October 2001, 3 October 2001, 25 October 2001, 25 January 2002 and 1 August 2002) or by the Wołomin District Prosecutor (on 4 April 2000, 8 May 2000, 20 June 2000, 6 September 2000 and 18 May 2001). These

decisions relied on a reasonable suspicion that the applicant had committed the offence and the severity of the likely penalty, which gave rise to a fear that the applicant would obstruct the proceedings. In some decisions it was stressed that the whereabouts of all the persons involved in committing the offence had not yet been established. Many of the decisions were, however, very laconic; for example, the decision of 1 August 2002 included only four lines of reasoning. The applicant appealed unsuccessfully against those decisions on several occasions.

15. On 13 February 2003 the Wołomin District Court decided to apply police supervision in place of pre-trial detention. It also prohibited the applicant from leaving the country. In the reasoned grounds for its decision, it stated that, bearing in mind the progress made in collecting evidence, the risk that the applicant would obstruct the proper conduct of proceedings had ceased to exist. On the same day the applicant was released from detention.

16. On 7 June 2003 the Warsaw District Court again ordered that the applicant be remanded in custody from 6 June 2003 until 6 September 2003. It justified its decision by a reasonable suspicion that the applicant had committed the offence and the severity of the likely penalty. It also referred to the necessity to secure the proper conduct of proceedings.

17. The applicant remained detained until 20 October 2003 as transpires from a document issued by the detention centre on the applicant's release.

18. Hearings were held on 9 June 2003, 26 June 2003, 12 September 2003, an unknown date in December 2003 and 8 January 2004.

19. On 30 January 2004 the Wołomin District Court sentenced the applicant to six years' imprisonment and ordered that payments be made to the victims on account of the damage incurred. On 30 March 2004 the applicant appealed.

20. On 29 September 2004 the Warsaw Regional Court quashed the judgment and remitted the case to the first-instance court.

21. On 2 March, 31 May and 20 June 2005 hearings were held before the Warsaw District Court (which had assumed jurisdiction of the case).

22. On 20 September 2005 the Warsaw District Court sent the case back to the Wołomin District Court so that the applicant's case could be joined to that of other defendants in the same proceedings.

23. On 22 December 2005 the Wołomin District Court held a hearing.

24. The proceedings are pending before the Wołomin District Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. For a presentation of domestic law, see *Kozik v. Poland,* no. 25501/02, judgment of 18 July 2006.

THE LAW

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

26. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, which provides:

> "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 Government accepted that the applicant had exhausted domestic remedies.

28. 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

29. The applicant and the Government agreed that the applicant's pre-trial detention lasted from 7 January 2000 to 13 February 2003 and from 6 June 2003 to 20 October 2003, which amounts to three years and five months.

30. The Government were of the opinion that the whole period of the applicant's detention had been justified. They stressed that the domestic courts dealing with the applicant's case had found his detention to be compatible with the provisions of Article 258 of the Code of Criminal Procedure and that no grounds warranting the applicant's release from detention as provided for by Article 259 of the Code had been established. The evidence obtained in the proceedings indicated that there was a reasonable suspicion that the applicant had committed the offence.

31. The Government also argued that the applicant's detention had been aimed at securing the proper conduct of the investigation, as there had been a risk that he would obstruct the proceedings and influence witnesses and other suspects (co-accused).

32. With regard to the review of the applicant's detention, the Government pointed out that the applicant's detention had been reviewed at regular intervals. On each occasion the decisions had been reasoned in a sufficient and relevant manner.

33. With regard to the proceedings on the merits, the Government argued that these had been very complex. They submitted that from 19 January 2000 to 18 January 2001 over 150 witnesses had been examined. They noted that hearings had been held at regular and brief intervals. Some had been adjourned, however, for reasons beyond the State's control, such as the absence of the applicant, his co-accused, lawyers or witnesses and the applicant's illness. The courts had taken measures to expedite the proceedings, such as imposing fines in the event of unjustified absence from a hearing. The Government underlined that three years after the applicant's initial detention the preventive measure had been changed to police supervision and he had been released.

34. The applicant contested the Government's arguments and maintained that the courts had not given sufficient and relevant reasons for his detention. In his view, no matter how strong the suspicion that he had committed the offence in question, this could justify his detention only at the early stage of the proceedings. He pointed out that the courts had repeatedly given identical reasons for his detention and that after a certain lapse of time this could no longer suffice. He underlined that those decisions had been laconic, and noted that one of them had included only four lines of reasoning. He submitted that the application of more lenient preventive measures had not been sufficiently considered.

35. The applicant did not share the Government's opinion about the complexity of the proceedings since, in his opinion, the serious nature of the offence and the number of accused did not automatically render the proceedings complex and no other arguments had been adduced by the Government. He stressed that he had not contributed to the length of the proceedings.

1. Principles established under the Court's case-law

36. 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, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

37. 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 established 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 of the Convention (see the *Contrada v. Italy* judgment of 24 August 1998, *Reports* 1998-V, p. 2185, § 54; *Mc Kay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-).

38. 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. 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, ECHR 2000-IV, § 153).

2. Application of those principles to the circumstances of the present case

39. The Court shares the Government's view that the case was quite complex, that hearings were held regularly and that some measures had been taken in order to expedite the proceedings. The Court also accepts that the applicant's detention was supervised by the courts at regular intervals. However, it also notes that over one year and four months elapsed between the first detention order and the filing of the bill of indictment.

40. The Court further observes that in their decisions extending the detention the domestic authorities repeatedly relied on the same grounds, namely: a reasonable suspicion that the applicant had committed the offence in question, the severity of the likely penalty and the risk that the applicant would obstruct the proper conduct of the proceedings, in particular, by influencing the witnesses and other suspects (co-accused). The domestic courts referred to the risk that the applicant would interfere with the conduct of the proceedings, but based this perceived risk solely on the severity of the likely penalty. No other grounds for detention had been given in those decisions, notwithstanding the lapse of time. The decisions themselves were laconic.

41. The Court therefore considers that, in the particular circumstances of the instant case, the grounds given by the judicial authorities for the applicant's detention did not satisfy the requirement of being "relevant" and "sufficient".

42. In view of the above considerations, the Court considers that the applicant's prolonged detention was in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 65,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested the claim, finding it exorbitant and irrelevant.

47. The Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, also claimed EUR 1,500 for the costs and expenses incurred before the Court.

49. The Government did not address this issue.

50. 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 considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court, less EUR 850 received by way of legal aid from the Council of Europe. It therefore awards EUR 650.

C. Default interest

51. 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 remainder of 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 650 (six hundred and fifty euros) 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 28 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President