



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

FOURTH SECTION

CASE OF KUC v. POLAND

(Application no. 73102/01)

JUDGMENT

STRASBOURG

17 July 2007

FINAL

10/12/2007

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 Kuc 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 Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 73102/01) 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 Jan Kuc (“the applicant”), on 24 June 2000.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1936 and lives in Katowice. He is currently detained in Racibórz Prison.

5. On 2 June 1999 the applicant was arrested by the police on suspicion of having assisted an offender who was being sought pursuant to a “wanted” notice. He was subsequently brought before the Jastrzębie Zdrój District Prosecutor (*Prokurator Rejonowy*) and charged with having intentionally impeded the apprehension of an arrestable offender. The actual offender had been charged with homicide. The prosecutor applied to the Jastrzębie Zdrój

District Court (*Sąd Rejonowy*) for the applicant to be detained pending the investigation.

6. On 4 June 1999 the District Court, after hearing evidence from the applicant, remanded him in custody for 3 months in view of the reasonable suspicion that he had committed the offence with which he had been charged. The court also considered that, given that the applicant had not confessed and that the evidence given by him contradicted the material gathered by the prosecution, there was a fear that he would induce witnesses to give false testimony or would otherwise obstruct the proper course of the proceedings.

7. The applicant's appeal against the detention order, as well as his further appeals against decisions prolonging his detention and all his subsequent repeated applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeals, he argued that the charge against him was based on unreliable and contradictory evidence. He referred to his personal circumstances, in particular his age (he was 63 at that time).

8. In the course of the investigation, on 30 September 1999, the applicant was charged with attempted homicide and 2 counts of armed robbery. The decision setting out the charges against the applicant was further amended on four occasions.

9. Between 17 August 1999 and 15 November 2000 the courts prolonged the applicant's pre-trial detention on 6 occasions. The relevant decisions were given, respectively, by the Katowice Regional Court (*Sąd Okręgowy*) on 17 August and 19 October 1999, the Katowice Court of Appeal (*Sąd Apelacyjny*) on 24 November 1999, 23 February and 15 November 2000 and the Supreme Court (*Sąd Najwyższy*) on 25 May 2000. The Supreme Court prolonged the applicant's detention until 2 December 2000.

10. In all those decisions the courts relied on a strong suspicion that the applicant had committed the offences with which he had been charged, which was supported by evidence from witnesses and experts. They attached importance to the serious nature of those offences and the likelihood of a heavy sentence being imposed on the applicant. They further considered that the need to secure the proper conduct of the investigation, especially the need to verify evidence from the suspects and witnesses, justified holding him in custody.

11. In the course of the proceedings, the courts informed the prosecutor and the applicant's lawyer about the dates of the sessions concerning the review of the applicant's pre-trial detention. Nevertheless, the applicant's lawyer failed to appear at the sessions.

12. The representatives of the prosecution participated in all court sessions relating to the prolongation of the applicant's detention and were

invited to state their position as to the necessity of keeping the applicant in custody.

13. In the meantime, the relevant penitentiary court had ordered that the applicant serve a sentence of imprisonment imposed in other criminal proceedings. He served that sentence from 2 June 1999 (the date of his arrest in the present case) to 27 July 2000.

14. At a session held on 15 November 2000, at which the applicant's lawyer was present, the Katowice Court of Appeal prolonged the applicant's detention until 2 March 2001, repeating the grounds that had been given in the previous decisions and – more particularly – relying on the need to secure and supplement evidence gathered in the investigation. That decision and the reasons therefor were upheld on appeal on 20 December 2000 at a session at which the applicant's lawyer was present.

15. On 29 December 2000 the applicant was indicted before the Kielce Regional Court on charges of attempted homicide, armed robbery, burglary and having intentionally impeded the apprehension of an arrestable offender. The bill of indictment comprised 9 accused. In all, 49 charges were brought against them. The principal accused, a certain J.P., was charged with 4 counts of homicide, 6 counts of attempted homicide, several counts of incitement to homicide and several counts of armed robbery. The prosecution asked the court to hear evidence from 162 witnesses.

16. On 24 January 2001 the Kielce Regional Court ordered that the applicant and his 6 co-defendants be kept in custody until 2 June 2001. The court referred to a strong likelihood that he had committed the serious offences with which he had been charged and stressed that a heavy penalty might be imposed on him. It considered that the severity of the anticipated penalty could by itself be a sufficient ground for continuing the detention in order to secure the proper course of the proceedings. In that context, the court added that both the gravity of the charges and the applicable sentence justified the conclusion that the defendants, if released, would obstruct the trial for fear of having that sentence executed.

17. Subsequently, the case was referred to the Katowice Regional Court, within whose territorial jurisdiction the offences in question had been committed.

18. On 23 May 2001 the Katowice Regional Court, under Article 263 § 3 of the Code of Criminal Procedure, ordered that the applicant be kept in custody until 2 December 2001. It reiterated the grounds previously given for his detention. On 4 July 2001 the Katowice Court of Appeal, ruling on the applicant's appeal, upheld the decision and added that it should be based on Article 263 § 4 since the applicant's detention had already exceeded the statutory time-limit of 2 years laid down in that provision, it being immaterial that during most of that period he had served the earlier sentence of imprisonment. The Court of Appeal fully shared the lower court's view that there were valid grounds for the applicant's detention.

19. The applicant's detention was subsequently prolonged under Article 263 § 4 of the Code of Criminal Procedure on many occasions.

20. The relevant decisions were given on the following dates.

21. On 26 November 2001 the Katowice Regional Court ordered that the applicant be held in custody until 2 March 2002. On 28 February 2002 that court ordered his continued detention until 2 July 2002 but then amended its decision and set the deadline for 8 April 2002. This was due to the fact that after the latter date only the Court of Appeal could prolong his detention beyond the term laid down in Article 263 § 3 of the Code of Criminal Procedure.

22. On 13 March 2002 the Katowice Court of Appeal prolonged the applicant's detention until 30 November 2002. On 30 October 2002 it prolonged his detention until 30 April 2003. On 23 April 2003 it ordered that the applicant be kept in custody until 30 September 2003. The next decision was given on 17 September 2003; it extended the applicant's detention until 30 December 2003. It was followed by the decision of 23 December 2003, whereby the Court of Appeal prolonged the applicant's detention until 30 April 2004.

23. All the decisions reiterated the grounds previously given for the applicant's detention, most notably the reasonable suspicion of his having committed the offences in question and the severity of the anticipated penalty which, in the courts' opinion, justified keeping him in custody to secure the proper conduct of the proceedings. The Court of Appeal also held that the proceedings had not been unduly protracted and that the frequent adjournments had been caused by events for which the Regional Court could not be held responsible.

24. All appeals and applications for release filed by the applicant – who repeatedly contested the factual basis for the charges against him and invoked the principle of the presumption of innocence – were to no avail.

25. In the meantime, the court held a number of hearings scheduled for various dates, some of which were cancelled or adjourned due to the absence of the applicant's co-defendants, some of whom had been released, or the fact that the defendants still in detention had not been brought to trial from prison. As of October 2002, the trial court had heard evidence from over 160 witnesses.

26. On 20 April 2004 the Katowice Regional Court gave judgment. The applicant was convicted and sentenced to fifteen years' imprisonment. He appealed. The applicant's detention was subsequently prolonged on three occasions.

27. On 1 June 2005 the Katowice Court of Appeal upheld the impugned judgment. The applicant failed to inform the European Court whether he lodged a cassation appeal with the Supreme Court.

28. Neither during the proceedings nor after their termination did the applicant make use of domestic remedies for the excessive length of judicial

proceedings under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

II. RELEVANT DOMESTIC LAW

29. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called “preventive measures” (*środki zapobiegawcze*).

Article 249 § 5 provides that the lawyer of a detained person should be informed of the date and time of court sessions at which a decision concerning the prolongation of detention on remand is to be taken.

30. A more detailed rendition of the relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called “preventive measures are stated in the Court’s judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

31. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court’s decisions in cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII.

THE LAW

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

32. 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.”

33. The Government contested that argument.

A. Admissibility

34. 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. Period to be taken into consideration

35. The applicant was arrested on 2 June 1999 and remanded in custody on 4 June 1999. On 20 April 2004 the Katowice Regional Court convicted the applicant and sentenced him to 15 years' imprisonment (see paragraphs 5, 6 and 26 above). As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). However, the period between 2 June 1999 and 27 July 2000 must be subtracted from the total period of the applicant's detention, as during this time the applicant had been serving a prison sentence imposed in other criminal proceedings (see paragraph 13 above).

Consequently, the period to be taken into consideration under Article 5 § 3 lasted 3 years, 8 months and 23 days.

2. The reasonableness of the length of detention

(a) The parties' arguments

36. The Government submitted that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They stressed that the applicant's detention had been justified by the persistence of a reasonable suspicion that he had committed the offences in question, the gravity of the charges against him and the complexity of the case. The Government also argued that the applicant's detention had been justified in order to secure the proper conduct of the investigation, as there had been a risk that he would obstruct the proceedings by influencing witnesses.

37. They further pointed out that the applicant's detention had been reviewed at regular intervals. On each occasion the decisions had been reasoned in a relevant and sufficient manner. They further maintained that all the applicant's requests for release and his appeals against the decisions prolonging his detention had been thoroughly and diligently examined by the competent courts.

38. The applicant contested these arguments. He submitted that his detention had exceeded a "reasonable time". He stressed that he had not

contributed to the length of the proceedings and that the authorities had failed to exercise all due diligence when dealing with his case.

(b) The Court's assessment

(i) General principles

39. Under Article 5 § 3 of the Convention, the presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p.37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable.

40. Continued detention therefore 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], cited above, § 110 *et seq.*).

41. The responsibility 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 demand 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 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 (see, for example, *Weinsztal v. Poland*, no. 43748/98, judgment of 30 May 2006, § 50).

42. 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 with the lapse of time this no longer suffices and 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.

43. In sum, domestic courts are under an obligation to review the continued detention of persons pending trial with a view to ensuring release when circumstances no longer justify continued deprivation of liberty. For at least an initial period, the existence of reasonable suspicion may justify detention but there comes a moment when this is no longer enough. As the

question whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features, there is no fixed time-frame applicable to each case (see *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

(ii) Application of the above principles in the present case

44. The Court observes that the judicial authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely the severity of the penalty to which he was liable given the serious nature of the charges against him and the risk that, once released, he would obstruct the proper course of the proceedings. In respect of the latter, they referred to the fact that the applicant had not confessed. The domestic courts further considered that there had been a risk that the applicant, if released, might exert pressure on witnesses. Lastly, the judicial authorities referred to the complexity of the case (see paragraphs 6, 10, 14, 16 and 23 above).

45. The Court agrees that the strong suspicion against the applicant of having committed serious offences could have initially warranted his detention. However, 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.

46. The Court reiterates that, 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 for an applicant’s lengthy detention to be justified under Article 5 § 3 (see *Celejewski v. Poland*, § 38, cited above).

47. Moreover, the authorities relied heavily on the likelihood that a heavy sentence would be imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. 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).

48 As regards the risk of obstruction of the proceedings, the Court notes that in its decision of 4 June 1999 the Jastrzebie Zdrój District Court held that such risk was justified by the fact that the applicant had not confessed (see paragraph 6 above). In so far as the domestic courts appear to have drawn adverse inferences from the fact that the applicant had not confessed, the Court considers that their reasoning showed a manifest disregard of the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of the applicant’s liberty

(see *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005; *Leszczak v. Poland*, no. 36576/03, § 48, 7 March 2006). Secondly, the judicial authorities considered that there had been a risk that the applicant might interfere with the course of the proceedings by exerting pressure on witnesses. The Court observes that it was legitimate for the authorities to consider that factor as capable of justifying the applicant's detention at the initial stages of the proceedings. However, the Court considers that that ground gradually lost its force and relevance as the proceedings progressed and it cannot accept it as a justification for holding the applicant in custody for the entire period.

49. The Court also notes that there is no specific indication that during the entire period in question the authorities envisaged the possibility of imposing other preventive measures on the applicant, such as bail or police supervision.

In this context the Court would emphasise that "other preventive measures" are expressly foreseen by Polish law to secure the proper conduct of criminal proceedings and that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures for 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 v. Poland*, no. 33492/96, § 83, 21 December 2000 and *McKay*, § 41, cited above).

50. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not "relevant" and "sufficient" to justify the applicant's being kept in detention for 3 years and over 8 months. In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

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

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

52. The applicant complained about the procedure relating to the prolongation of his pre-trial detention. In particular, he alleged that he and his lawyer did not attend the sessions at which his detention was prolonged. He relied on Article 5 § 4 of the Convention, which reads as follows:

"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."

53. The applicant acknowledged that the Jastrzębie Zdrój District Court had given the detention order after the session in which he had participated. He also acknowledged that his lawyer had been present at the court's

session held on 15 November 2000 at which detention on remand was prolonged. He further conceded that he had been informed of the court's sessions concerning this matter (see paragraphs 6 and 14 above).

54. The Government relied on the applicant's above admissions. Indeed, they submitted, the applicant's lawyer had been notified of the court's sessions at which detention on remand had been prolonged and had been entitled to take part in them. The lawyer was summoned to those sessions, although he was absent from some of them. Furthermore, the Government stressed that the Court of Appeal, when examining the requests for a prolongation of the applicant's detention had had at its disposal both the requests of the Regional Court and the applicant's submissions. The Government maintained that, taking into consideration all the proceedings for the review of the lawfulness of the applicant's pre-trial detention, the principles guaranteed in Article 5 § 4 of the Convention had been respected in the present case.

55. The Court has recently stated the principles which emerge from its case-law on Article 5 § 4 in the case of *Celejewski v. Poland*. In the context of the present case, it would reiterate, in particular, that 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. Furthermore, 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 *Celejewski*, cited above, § 43, with further references).

56. In the present case the applicant was remanded in custody by the decision of 4 June 1999 given by the Jastrzębie Zdrój District Court. The applicant acknowledged that the court had issued the detention order after having held a session in his presence, as required by the law in force at the material time. Moreover, he lodged an appeal against this decision to contest the detention order. He also acknowledged that his lawyer had been present at the court's sessions held on 15 November 2000 at which his detention on remand was prolonged (see paragraphs 6, 14 and 53 above).

57. The procedure for the prolongation of the applicant's pre-trial detention during the period under consideration was based on Article 249 § 5 of the Code of Criminal Procedure, which requires the domestic courts to inform the lawyer of a detained person of the date and time of court sessions at which a decision was to be taken concerning prolongation of detention on remand, or an appeal against a decision to impose or to prolong detention on remand was to be considered. It was open to the lawyer to attend such sessions. 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, as assured by his lawyer or at any other stage, was inadequate.

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

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. The applicant further complained that the length of the proceedings in his case had exceeded a "reasonable time" within the meaning of Article 6 § 1, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

61. The Government maintained that the applicant had failed to exhaust domestic remedies, as he had not lodged a complaint about the breach of the right to a trial within a reasonable time under the 2004 Act.

62. The applicant, for his part, submitted that this remedy was not effective and stated that he had no intention to lodge a complaint under the relevant provisions.

63. Pursuant to Article 35 § 1 of the Convention:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law..."

64. The Court observes that the applicant failed to avail himself of any of the following remedies provided for by Polish law. When the proceedings were pending he could have made a complaint under sections 5 and 18 of the Law of the 2004 Act. After the termination of the trial, he could have brought a civil action under Article 417 of the Civil Code read together with section 16 of the above-mentioned Law (as to the effectiveness of the latter remedy, see *Krasuski v. Poland*, judgment of 14 June 2005, no. 61444/00, § 72, ECHR 2005-V (extracts)).

65. It follows that the complaint under Article 6 § 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 14,000 euros (EUR) in respect of pecuniary damage and 25,000 EUR in respect of non-pecuniary damage.

68. The Government maintained that the applicant's claims were excessive. They asked the Court to rule that a finding of a violation of Article 5 § 3 constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

69. 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, the Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

B. Costs and expenses

70. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the domestic courts and in the proceedings before the Court. This sum concerned in particular translation and postage expenses.

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

72. 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 actually and necessarily been 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 applicant, who was not represented by a lawyer, the sum of EUR 100 under this head.

C. Default interest

73. 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 complaint concerning the length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President