



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

FOURTH SECTION

CASE OF Piotr BARANOWSKI v. POLAND

(Application no. 39742/05)

JUDGMENT

STRASBOURG

2 October 2007

FINAL

02/01/2008

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 Baranowski 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. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 11 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 39742/05) against the Republic of Poland lodged with the Court on 31 October 2005 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr P. Baranowski, the applicant, represented by Mr J. Brydak, a lawyer practising in Warsaw.

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

3. On 6 June 2006 the Court decided to give notice of 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 1975 and lives in Kamińsk.

5. In 2001 the police conducted an operation to disband several organised criminal gangs that were acting in and around Warsaw, stealing luxury cars with a view to selling them in the countries of the former Soviet Union. There were about five such groups, cooperating closely with each other and closely connected with Poland's most dangerous armed criminal groups: the Pruszków mafia and the Wołomin mafia.

6. The applicant was arrested on 18 December 2001 on suspicion of forming and leading an organised criminal gang, carrying out multiple robberies with extreme brutality, committing a series of thefts and handling stolen property. He was remanded in custody by a decision of the Warsaw District Court of 20 December 2001.

7. At that time the Warsaw Regional Prosecutor was conducting an investigation in respect of more than fifty other members of the criminal gangs mentioned above. Forty-two of them were held in custody. The investigation was complex and time-consuming, given that the criminal gangs collaborated closely with many persons who were to be questioned by the prosecutors, for example, receivers of stolen goods, persons hiding stolen cars or persons tracking cars which were to be stolen, among others.

8. In addition, the prosecutor opened an investigation in respect of several police officers from Warsaw and surrounding towns on charges of corruption and helping the criminal groups' members to evade the law.

9. On 5 December 2002 a bill of indictment against the applicant and fifty-nine other co-accused (members of five cooperating criminal gangs) was lodged with the Warsaw District Court. The evidentiary material was presented in 99 case files. The applicant was charged with forming and leading a criminal gang, carrying out multiple robberies, committing a series of thefts and handling stolen property on a large scale. The criminal gang, of which the applicant was the leader, was known for its brutality and ruthlessness and for the illegal trafficking of firearms.

10. On 6 January 2003 the Warsaw District Court held the first hearing. The following hearings were held by the District Court on: 23, 30 May, 23, 24 June, 1, 4, 7, 8 July, 13, 18, 22, 25 August, 5, 12, 15, 19 September, 10, 20, 21, 23, 24, 31 October, 17 November, 5, 22 and 23 December 2003; 5, 26 January, 16, 17, 19, 20 February, 8, 9 March, 1, 9 April, 14, 18, 21, 25 May, 3, 7, 14, 23 June, 5 July, 10, 25, 31 August, 3, 6 September, 7, 8, 15 October, 2, 9 November, 7, 8, 10, 13 and 18 December 2004. In total, sixty hearings were held by the District Court.

11. During the trial the District Court examined a wide range of evidentiary material, ordered medical expert opinions on the accuseds' mental health and expert opinions in the field of dactyloscopy, conducted inquiries in the accuseds' respective neighbourhoods, inspections of the crime scenes and garages where the stolen cars had been hidden and assessments of the accuseds' assets. The proceedings involved taking evidence from a considerable number of witnesses and victims and from one key witness.

12. The applicant's pre-trial detention was prolonged several times upon the Warsaw Regional Prosecutor's request by the District Court. The decisions were issued, *inter alia*, on 15 March, 17 June, 13 December 2002, 12 December 2003, 6 March, 22 June, 28 September, 5 November 2004, 16 March, 15 July and 30 September 2005. In its decisions the court underlined

that there was a strong likelihood that the applicant had committed the crimes, confirmed in particular by the testimonies of a key witness and a co-accused, and considered that there was a reasonable risk that the applicant would tamper with the evidence, given that he had had close connections with the other co-accused and was the leader of the criminal gang. In that respect, the court pointed out that the applicant had attempted to pass illegal correspondence out of custody. The court also made reference to the activities previously carried out and gave a precise indication of the evidence that still had to be taken. Consequently, it decided that it was indispensable to separate the applicant from the other suspects, the witnesses and the evidence which had not yet been secured. The court also relied on the serious nature of the charges against the applicant and the severity of the penalty he faced. No special circumstances dictated the lifting of the detention.

13. The applicant appealed against several of the above mentioned decisions:

- his appeal of 23 December 2002 against the decision of 13 December 2002 was dismissed by the Warsaw District Court on 13 January 2003. The decision was upheld on 4 March 2003 by the Warsaw Regional Court;
- his appeal of 22 December 2003 against the decision of 12 December 2003 was dismissed by the Warsaw Court of Appeal on 6 February 2004;
- his appeal of 23 December 2004 against the decision of 18 December 2004 was dismissed on 18 January 2005;
- his appeal of 28 July 2005 against the decision of 15 July 2005 was dismissed by the Warsaw Regional Court on 23 August 2005.

14. From 30 July 2002 to 26 January 2004 the applicant served a prison sentence imposed on him in separate proceedings by a judgment of the Warsaw District Court of 17 April 2001.

15. On 18 December 2004 the District Court imposed a sentence on fifty of the co-accused. The applicant was found guilty of the charges against him and sentenced to seven years' imprisonment and a fine of 20,000 Polish zlotys (PLN). The judgment, with its written grounds, was served on the applicant's lawyer on an unspecified date in November 2005.

16. On 5 December 2005 the applicant's lawyer lodged an appeal against the judgment.

17. On 9 January 2006 the applicant lodged a request to quash the detention order and apply a less severe preventive measure. On 13 January 2006 the court quashed the detention order on bail of PLN 150,000 and ordered the applicant to be placed under police surveillance and banned from leaving the country.

18. On 25 January 2006 the applicant lodged a request to reduce the bail to PLN 10,000, but it was dismissed on 30 January 2006.

19. On 31 January 2006 the applicant lodged a request to take out a mortgage on his mother's property in place of the bail.

On 1 February 2006 the court prolonged the applicant's detention until the mortgage could be taken out. The applicant was released on 7 March 2006.

20. On 6 June 2006 the case file, comprising 149 volumes, was transferred to the second-instance court. On 22 November 2006 the appellate court quashed the judgment and remitted the case for re-examination.

II. RELEVANT DOMESTIC LAW

21. The relevant domestic law concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other “preventive measures” (*środki zapobiegawcze*) is set out 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.

22. The judgment in *Bąk v. Poland*, no. 7870/04, §§ 38-40, 16 January 2007, addresses the issue of domestic practice in the area of pre-trial detention and organised crime in particular.

23. For the relevant domestic law and practice concerning the available remedies against excessive length of proceedings, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-VIII; *Rybczyńscy v. Poland*, no. 3501/02, 3 October 2006; and *Białas v. Poland*, no. 69129/01, 10 October 2006.

THE LAW

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

24. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, the relevant part of 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

25. The Government submitted in the first place that the applicant had not exhausted the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he had failed to appeal against certain decisions prolonging his detention.

26. The Court reiterates that it is well established in its case-law that an applicant must first make use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2431, § 71).

27. In the present case the applicant lodged appeals against most of the decisions prolonging his detention, including the decisions taken in the final stage of the proceedings, when the length of the detention had reached its most critical point. He also lodged requests for the detention measure to be lifted or for a more lenient preventive measure to be imposed. The Court considers that the purpose of the remedies used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention, as their aim was to obtain his release.

28. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in previous cases against Poland (see *Grzeszczuk v. Poland*, no. 23029/93, Commission decision of 10 September 1997, and *Buta v. Poland*, no. 18368/02, §§ 23-27, 28 November 2006,) and that the Government have not drawn attention to any new circumstances which would lead the Court to depart from its previous findings.

29. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

a. The Government's submission

30. The Government pointed out that the evidence obtained in the proceedings indicated that there was a strong likelihood that the applicant had committed the crimes in question. The charges brought against him concerned such serious offences as forming and leading an organised criminal gang, which had been involved in committing dozens of robberies and thefts. The gang cooperated closely with ruthless organised criminal gangs and also took part in handling firearms. Thus, bearing in mind the severity of the charges and the scale of the criminal activity in question, the applicant's detention was justified, in the Government's opinion, by a

genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty.

The Government further argued that the detention had been aimed at ensuring the proper conduct of the proceedings and had been justified by the risk of the applicant's obstructing the proceedings and tampering with the evidence. This risk stemmed from the fact that the proceedings concerned an organised criminal gang of which the applicant was leader. On the date of applying the preventive measure the investigation had still been in progress, many investigatory measures were yet to be taken and additional evidence yet to be found and secured. Given the fact that the applicant had tried to pass illegal correspondence out of custody, the Government concluded that only the isolation of the members of the group from each other could prevent their colluding and coordinating their testimonies or exerting unlawful pressure on the witnesses or the suspects who were cooperating with the prosecution authorities.

31. The Government argued that the circumstances justifying the applicant's detention had remained valid for its duration. Moreover, in the course of the proceedings the prolongation of his detention had been justified by the need, which had arisen during the preparatory proceedings, to extend the personal and material scope of the investigation. New circumstances had come to light when other perpetrators had been detained and examined. It was necessary to examine the files of the relevant inquires, to obtain new pieces of evidence, expert opinions and documents, and to take further investigatory measures. A need had arisen to take evidence from further witnesses and persons involved in the activities of the criminal gang, and from the apparently corrupt police officers. Since not all these persons had been located and questioned, it was necessary to prevent contact between them and other members of the gang. Moreover, the courts that had prolonged the applicant's detention observed that there had been contradictions between the applicant's and other persons' testimonies and there was therefore a reasonable fear of collusion on his part.

32. The Government also submitted that the courts had not applied the pre-trial detention measure automatically but had based their decisions on a careful consideration of each individual case. The courts had decided to release four co-defendants as soon as they had found that the reasons justifying their detention had ceased to be relevant.

33. The Government drew attention to the high quality of the prosecutor's applications for the prolongation of the applicant's detention. In his comprehensive applications the prosecutor had indicated in detail and in respect of each of the detainees what investigatory measures had to be taken and what evidence had been taken since the previous decision to prolong the detention.

34. As to the complexity of the case, the Government argued that it was extremely complex. In this connection the Government submitted that in the

period from 2000 to 2003 the number of persons serving a sentence for involvement in organised criminal activities had remained relatively stable in Poland, representing on average only 0.016% of all those serving a sentence at that time. Since 2004, there had been a significant increase in the number of sentences relating to organised criminal activities. In the period up to 2000 the total number of those serving a sentence for organised criminal activities had been significantly lower. For example, in 1998 and 1999 only seven and eighteen persons respectively had been given a prison sentence for such crimes. According to the Government, several procedural problems tended to arise in cases relating to organised criminal activities. Such cases were complex by nature, as they typically involved the investigation of an activity carried out by a gang, and that in turn involved the examination of offences committed by several persons. The trial and pre-trial material was often voluminous and the legal and factual assessment required considerable time and effort. In many such cases evidence had to be taken from anonymous witnesses. The trial court had to guarantee both the anonymity of such witnesses and the rights of the accused. There were often problems due to the presence at the hearings of the accused or their legal representatives, including defence counsel and witnesses, as they were often interested in slowing down the process and as a consequence the trial court could not carry out the appropriate measures as planned. There were also many logistical problems, as the witnesses and accused, mostly belonging to the same or competing gangs of organised criminals in detention, required isolation both within the relevant detention facility and while being transported. Their relatively large number, coupled with the need to provide appropriate security, meant that they had to be placed in different detention centres. Even persons detained in the same facility had to be transported and brought to the courtroom separately, requiring additional manpower and equipment. In addition, not all courts had at their disposal appropriate facilities both to ensure the isolation of those being brought to court and to allow the police to guarantee the security of all the parties involved. This was particularly true of many district courts.

35. With respect to the present case, the Government pointed out that both the prosecutor and the trial court had conducted extensive evidentiary proceedings, as was typical for proceedings in cases concerning organised crime. The case file of the investigation in the applicant's case contained 99 volumes. In the course of the judicial proceedings, a further 49 volumes were added. A huge number of investigatory measures were taken in respect of numerous suspects and dozens of stolen vehicles. The witnesses were questioned on at least 100 occasions and many expert opinions and reports were obtained (in the area of dactyloscopy, psychiatrists' opinions). Operations with the participation of key witnesses were carried out. Dozens of searches, inspections, and procedures for the identification of individuals, including identity parades, and objects were carried out. The prosecution

obtained voluminous documentary evidence from various subjects. The first-instance court held 60 hearings and examined 59 co-accused. The judgment numbered 190 pages.

36. According to the Government, hearings had been held regularly during the proceedings and had been fixed at regular intervals. In their submission, the proceedings had been concluded with reasonable speed and without any undue delays.

37. Lastly, the Government concluded that the applicant's pre-trial detention in the present proceedings had lasted from 21 March 2002 until 18 December 2004, when the Warsaw Regional Court had given its judgment. Meanwhile, the applicant had served a prison sentence imposed on him in other proceedings. He had been imprisoned from 30 July 2002 to 26 January 2004. Therefore, the Government were of the opinion that the applicant had effectively only been detained for one year and three months.

b. The applicant's submission

38. The applicant disagreed with the Government's opinion that the detention had been necessary in his case and stated that he had not colluded with any persons called to testify in his case and had not tried to conduct illegal correspondence. He further argued that he did not have any "huge power" in the world of crime, and that the Polish courts were excessively preoccupied with organised criminal gangs. He stated that the first-instance judgment showed that he had not cooperated with the mafia and had not used violence.

39. The applicant further argued that the prosecutor had made some allegations against him without good reasons and thus could not be said to have acted with due diligence in his case.

40. The applicant did not address the issue of the complexity of the case; he stated, however, that the range of evidence referring directly to him was limited to such an extent that the proper organisation of the case would have enabled the court to take the evidence over one or two days.

41. The applicant also disagreed with the Government's assessment of the actual length of the detention and submitted that the whole period during which he had been remained in custody had to be taken into consideration.

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

42. According to 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).

43. 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 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 (see *McKay v. the United Kingdom*, [GC], no. 543/03, § 43, ECHR 2006- ...).

44. 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*, no. 26772/95, § 153, ECHR 2000-IV).

3. *Application of the principles to the circumstances of the present case*

(a) **Period to be taken into consideration**

45. The Court considers that the applicant's detention lasted from 18 December 2001 until 18 December 2004, the date on which the first-instance judgment was given. During that time the applicant's detention coincided with the prison sentence imposed on him in separate criminal proceedings and which lasted from 30 July 2002 to 26 January 2004 (see paragraph 14 above).

The Court reiterates that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39).

Likewise, the Court cannot take into account the period between 30 July 2002 to 26 January 2004 for the purpose of assessing the reasonableness of the length of the detention under Article 5 § 3 of the Convention, as during that period the applicant's detention pending trial coincided with his detention after conviction in separate criminal proceedings. Such detention cannot be considered on the same footing as a detention under Article 5 § 1 (c), with which Article 5 § 3 is solely concerned, as it applies only to persons in custody awaiting their trial (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9, and *Bak v. Poland*, no. 7870/04, § 54, 16 January 2007).

46. The Court consequently finds that the period to be taken into consideration lasted from 18 December 2001 to 29 July 2002 and from 27 January to 18 December 2004 and amounted to approximately one year and five months.

(b) Reasonableness of the length of detention

47. The Court notes that detention pending trial was imposed on the applicant in view of the severity of the charges against him, the fact that he had been the leader of the criminal gang and the resulting risk that he would obstruct the proceedings. Thus, it was a classic example of a case relating to organised crime, by definition presenting more difficulties for the investigating authorities and, later, for the courts in determining the facts and the degree of responsibility of each member of the gang. It is obvious that in cases of this kind, continuous control and limitation of the defendants' contact with each other and with other persons may be essential to avoid their absconding, tampering with evidence and, most importantly of all, influencing, or even threatening, witnesses. Accordingly, longer periods of detention than in other cases may be reasonable (see *Bak*, cited above, § 56).

48. In assessing the conduct of the authorities in the present case the Court will take into account the special circumstances deriving from the fact that it concerned a member of a criminal gang (see *Celejewski*, *Buta*, and *Bak*, all cited above).

49. The Court observes that in their decisions to remand the applicant in custody the judicial authorities relied on the following principal grounds: the reasonable suspicion against the applicant, the serious nature of the offences with which he had been charged, the risk of his influencing the testimonies of witnesses and of the co-accused and the need to obtain extensive evidence (see paragraph 12 above). Furthermore, the Government stated that the particular complexity of the case, since it concerned organised crime, was an additional justification for the applicant's detention.

50. The suspicion that the applicant had committed the offences was confirmed in particular by the testimonies of a key witness and a co-accused. Having said that, the Court would emphasise that there is a general

rule that the domestic courts, in particular the trial courts, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention. The Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed.

Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by “relevant” and “sufficient” reasons.

51. The Court considers that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants. In these circumstances, the Court also accepts that the difficulties in obtaining evidence deriving from the fact that, at the same time, the prosecutor was conducting an investigation in respect of more than fifty other members of several closely cooperating criminal gangs and police officers in their pay, constituted relevant and sufficient grounds for prolonging the applicant's detention for the time necessary to complete the investigation, draw up the bill of indictment and hear evidence from the witnesses and the accused.

52. As regards the risk of pressure being brought to bear on witnesses or of the obstruction of the proceedings by other unlawful means, the Court notes that at the initial stages of the proceedings the judicial authorities appeared to presume that such risks existed on the ground that the applicant had been a member of an organised criminal group. The subsequent decisions to prolong the applicant's detention pending trial underlined the fact that contradictions had appeared in the witnesses' statements during the hearings (see paragraph 32 above). The Court accepts that, in the special circumstances of the case, the risk flowing from the nature of the applicant's criminal activities actually existed and justified holding him in custody for the relevant period.

53. It must be noted that the domestic courts, in ordering the prolongation of the applicant's pre-trial detention, referred to the continuing need for that measure and did not merely rely on the grounds previously given (see paragraphs 33 and 34 above).

54. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were “relevant” and “sufficient” to justify holding him in custody for the entire period in issue. That being said, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the criminal proceedings against the applicant.

55. The Court observes that the proceedings were of considerable complexity, regard being had to the number of defendants, the need to separate them during the extensive evidentiary proceedings and to implement special measures on account of the connections between the criminal gangs. Nevertheless, the hearings in the applicant's case were held

regularly and at short intervals. The first-instance court held 60 hearings and examined 59 co-accused. The witnesses gave evidence on at least 100 occasions and a considerable number of other investigatory measures were taken.

56. The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the exceptional complexity of the case. It should not be overlooked that, while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the judges to clarify fully the facts in issue, to provide both the defence and the prosecution with all necessary facilities for putting forward their evidence and stating their case and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed.

57. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

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

58. The applicant complained that his appeals against the decisions prolonging the detention had not been examined “speedily” in breach of Article 5 § 4 of the Convention which provides 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.”

A. Admissibility

59. There are no grounds on which this complaint can be rejected at this stage. In particular, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be declared admissible.

B. Merits

1. Arguments before the Court

60. The Government pointed to the fact that the applicant had not appealed all decisions on the prolongation of his detention but solely against four of them. The court dealt with his appeals over 21, 45, 25 and 26 days. The applicant's request to have the detention order quashed was examined within 19 days (see paragraph 13 above).

The Government were of the opinion that the “speediness” requirement set out in Article 5 § 4 of the Convention was fully complied with, the courts having dealt with the applicant's appeals in a reasonable time, without any delays.

61. The applicant disagreed and stated that it had taken the courts too long to examine his appeals.

2. General principles governing the requirement of “speediness”

62. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (*Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II, *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000-III). In that context, the Court also recalls that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

63. Where domestic law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4, in particular, as concerns the speediness of the review by the appellate body of a detention order imposed by a lower court. At the same time, the standard of “speediness” is less stringent when it comes to the proceedings before the court of appeal (see *Wedler v. Poland*, no. 44115/98, 16 January 2007). The requirement of a speedy decision provided for in Article 5 § 4 relates primarily to a first decision issued upon the applicant's request for release. Thus, the period of examination of an appeal against this decision will not necessarily entail a breach of this provision, even though the same period of time might not be considered reasonable with regard to proceedings before a first-instance authority. In other words, Article 5 § 4 does not guarantee to the detainee a right to obtain a full review of the detention whenever he wants it, but only at “reasonable intervals”. Whether or not the intervals were “reasonable” should be assessed in the particular circumstances of each case.

64. The Court observes that it has found delays of 23 days for one level of jurisdiction, and 43 days or 32 for two levels of jurisdiction, to be incompatible with Article 5 § 4 (see, respectively, *Rehbock v. Slovenia*, no. 29462/95, §§ 82-88, ECHR 2000-XII; *Jabłoński v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000; and *G.B. v. Switzerland*, no. 27426/95, §§ 34-39, 30 November 2000). On the other hand, in *Rokhlina v. Russia* (no. 54071/00, § 79, 7 April 2005), where the global duration of the proceedings was 41 days for two levels of jurisdiction, the Court found no violation of

Article 5 § 4 of the Convention. In that case the Court noted, in particular, that the applicant had requested leave to appear in person at the appeal court, and that because of it the court had to adjourn the proceedings for a week. In another recent case (*Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006) the Court found the delays of 36, 29 and 26 days to be incompatible with Article 5 § 4, stressing that the entire duration of the appeal proceedings was attributable to the authorities. In the above mentioned case *Wedler v. Poland* the Court found no breach of Article 5 § 4 where the examination of two appeals against the decisions prolonging the detention had lasted 42 days and 23 days respectively.

3. *Application to the present case*

65. The Court notes that in the present case the proceedings were instituted by the relevant requests of the Warsaw Regional Prosecutor for prolongation of the applicant's detention (see paragraph 12 above). The subsequent District Court's decisions were given after the examination of the circumstances of the case and verification of the existence of the continuous need for the detention. The relevant appeals were examined by the appellate court within 21, 45, 25, 26 and 19 days (see paragraphs 13 and 60 above). Further, the Court emphasises that the delay occurred in the proceedings before the second-instance court, examining the detention order issued by the first-instance court, following a procedure of a judicial character. In such circumstances the Court considers it to be of lesser importance that several weeks elapsed before the final decision was issued.

66. The periods of 21, 25, 26 and 19 days (see paragraph 65 above) during which the court dealt with the applicant's appeals against the prolongation decisions or with his requests to be released are not insignificant by themselves; however, the Court considers that the factual and legal issues examined with respect to the need for the applicant's detention were of considerable complexity. The Court observes in that connection that in certain instances "the complexity of ... issues involved in a determination whether a person should be detained or released can be a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements" (see, *mutatis mutandis*, *Baranowski*, cited above, § 72 and *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

67. Having said that, the Court observes that the Government have not submitted any arguments justifying the period of 45 days during which the applicant's appeal of 22 December 2003 against the decision of 12 December 2003 was examined by the Warsaw Court of Appeal (see paragraph 13 above). In particular, the Court notes no circumstances which could indicate that the applicant contributed to the length of the impugned proceedings.

68. In these circumstances, the Court finds that there was a violation of Article 5 § 4 of the Convention as regards the “speediness” of review afforded by the domestic courts with respect to the decision of 6 February 2004 and concludes that the examination of the remaining appeals did not amount to a breach of that Article.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

69. The applicant claimed damages both with respect to the alleged violation of Article 5 § 3 as well as of Article 5 § 4 of the Convention in the amount of 50 000 PLN (12 500 EUR) for non pecuniary damage and 79 200 PLN (20 000 EUR) for pecuniary damage.

70. The Government submitted that the amount claimed by the applicant was totally groundless and exorbitant and that his claim should therefore be rejected.

71. The Court recalls that it has found no breach of Article 5 § 3 and a breach of Article 5 § 4 of the Convention only as regards the appellate proceedings terminated by the decision of 6 February 2004. As to the applicant's claim for pecuniary damage, the Court does not discern any causal link between the violation found and the damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary damage with respect to the breach of Article 5 § 4 of the Convention 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 500 under this head.

B. Costs and expenses

72. The applicant, who was represented by a lawyer before the Court and was not granted legal aid, asked for reimbursement of costs and expenses incurred in connection with the proceedings in amount of 9 340 PLN (4 950 EUR).

73. The Government objected to the claim.

74. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, § 220).

75. The Court notes, in the light of documents submitted to it, that the costs claimed by the applicant seem to have been indeed actually incurred.

However, the court notes that these costs and fees go well beyond the average level of fees for legal representation in such cases before the Court. The Court, deciding on an equitable basis and having regard to the details of the claims submitted, awards the applicant a global sum of EUR 500 in respect of fees and expenses plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention only with respect to the proceedings terminated by the decision of 6 February 2004 and that there has been no violation of this Article as regards the examination of the remaining appeals;
4. *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 500 (five hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on the above amounts, to be converted into Polish zlotys at the date of 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President