



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

FOURTH SECTION

CASE OF SZYDŁOWSKI v. POLAND

(Application no. 1326/04)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

16/01/2008

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 Szydłowski 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 L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 1326/04) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Jan Szydłowski (“the applicant”), on 30 December 2003.

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

3. On 14 March 2006 the Court declared the application partly inadmissible and decided to communicate complaints concerning the length of the applicant's detention and the length of the criminal proceedings 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 1970 and lives in Gdynia. The application was lodged on his behalf by his wife, Mrs Beata Szydłowska, who submitted a duly signed written authorisation from the applicant.

A. The criminal proceedings against the applicant

5. On 17 March 2000 the Gdańsk District Court remanded the applicant in custody on suspicion of attempted armed robbery. It held that there was a reasonable risk that he would tamper with evidence. It also relied on the severity of the anticipated penalty. At the same time the applicant was detained on remand in respect of another, separate set of criminal proceedings (no. IV K 174/98).

6. On 6 June 2000 the Gdańsk Regional Court prolonged the applicant's detention until 17 September 2000. On 12 September 2000 the Regional Court extended that period until 15 December 2000. It relied on the complexity of the investigation, the need to obtain expert evidence and the severity of the anticipated penalty. It further found that detention on remand was the only measure which could secure the proper conduct of the proceedings and prevent the applicant from interfering with witnesses. On 5 December 2000 the Regional Court prolonged the applicant's detention until 17 March 2001, invoking the nature of the charges.

7. The applicant was detained in connection with an investigation conducted by the Department of Organised Crime of the Gdańsk Regional Prosecutor's Office, in which several other persons had already been detained and charged.

8. On 7 March 2001 the Gdańsk Court of Appeal prolonged the applicant's detention until 31 May 2001. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the severity of the anticipated penalty. The Court of Appeal further held that detention on remand was the only measure which could secure the proper conduct of the proceedings, given the nature of the charges and the relations between the suspects who had acted in an organised group. It also considered that the prolongation of detention was justified by the need to obtain DNA evidence in order to corroborate evidence previously obtained.

9. On 15 May 2001 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant was charged with robbery and armed robbery which had been committed in an organised armed criminal group. The bill of indictment listed 118 charges brought against 19 defendants, who were all detained on remand. The case file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses.

10. On 17 May 2001 the Gdańsk Regional Court ordered that the applicant be remanded in custody until 31 October 2001, finding that it was necessary in order to prevent him and his co-defendants from evading justice or tampering with evidence. It also referred to the complexity of the case stemming from the number of defendants and witnesses to be heard.

11. On 13 September 2001 the Gdańsk Regional Court refused the request of the applicant and two other defendants (J.N. and R.O.) to grant a

severance order with a view to hearing their cases separately, and thus expediting the proceedings. Similar requests were refused on 23 January 2003 and 15 April 2003.

12. On 16 October 2001 the Regional Court prolonged the applicant's detention until 17 March 2002, finding that the grounds previously given for remanding him in custody were still valid.

13. The trial began on 28 December 2001. However, as of April 2002 the reading out of the bill of indictment by the prosecution had still not been concluded. Initially, the trial court held three hearings per month. As from June 2002 it decided to hold five hearings per month.

14. During the hearing held on 30 January 2002 the trial court ordered the removal of the applicant and some other defendants from the court room because of their disruptive behaviour.

15. On 25 February 2002 the applicant attempted to commit suicide by hanging himself. He was hospitalised in the detention centre hospital from 25 February to 4 March 2002 and treated for a head injury.

16. During the hearing held on 27 February 2002 the applicant stated that he had a severe headache and was unable to participate in the hearing. The trial court ordered him to be examined by a doctor who found that the applicant could participate in the hearing.

17. On 13 March 2002 the Court of Appeal ordered that the applicant be remanded in custody until 30 September 2002. In addition to the grounds previously invoked, it found that the prolongation of detention was justified under Article 263 § 4 of the Code of Criminal Procedure by the particular complexity of the case. It further observed that the delays in the trial were partly attributable to some of the defendants who had attempted to disrupt the proceedings and, consequently, had had to be removed from the court room. Furthermore, the Court of Appeal held that no other preventive measure could secure the proper conduct of the trial. In that respect, the Court of Appeal observed that there was a reasonable risk that the applicant and other defendants would interfere with the proceedings, given the nature of the charges, the severity of the anticipated penalty and the fact that some of them had attempted to interfere with the proceedings in the course of the investigation.

18. On 11 September 2002 the Court of Appeal prolonged the applicant's detention until 31 December 2002. In addition to the grounds previously relied on, it held that the applicant's detention was justified under Article 258 § 2 of the Code of Criminal Procedure since that provision established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the

proceedings¹. It also noted that the prolongation of detention was justified by the volume of evidence to be heard during the trial.

19. On 18 December 2002 the Gdańsk Court of Appeal ordered that the applicant be held in custody until 30 June 2003. On 25 June 2003 the Court of Appeal extended the applicant's detention until 31 December 2003, relying on the same grounds as previously. In addition, it observed that the trial could not be terminated earlier due to obstructiveness on the part of the defendants who had filed numerous requests challenging the trial court. It also noted that the trial court had taken various procedural steps in order to accelerate the proceedings.

20. On 11 December 2003 the Regional Court made an application under Article 263 § 4 of the Code of Criminal Procedure to the Gdańsk Court of Appeal, asking that the applicant's detention be prolonged beyond the statutory time-limit of 2 years – until 30 June 2004. On 17 December 2003 the Court of Appeal granted that application. The applicant appealed against that decision.

21. On 29 January 2004 a different panel of the Court of Appeal amended the decision of 17 December 2003, holding that the Court of Appeal could not rule on the Regional Court's application of 11 December 2003, as that application had been premature. The Court of Appeal found that since in the other set of criminal proceedings (no. IV K 174/98) the applicant had been remanded in custody from 29 October 1997 to 3 October 2002, and subsequently had begun to serve his sentence, the period of the applicant's detention in the present case has not yet reached the statutory time-limit of two years. Consequently, a decision on the prolongation of the applicant's detention should be taken by the Regional Court.

22. On 10 February 2004 the Regional Court ordered that the applicant be remanded in custody until 30 June 2004. It invoked the complexity of the case, the volume of evidence and the severity of the anticipated penalty. Having regard to the latter, it considered that the applicant might attempt to obstruct the proceedings. In addition, the Regional Court observed that up to April 2003, when the court commenced to hear evidence, the defendants had frequently attempted to obstruct the proceedings by filing numerous requests challenging the trial court.

23. On 17 February 2004 the Regional Court informed the applicant that it was not feasible to schedule more than 5 hearings per month.

24. Subsequently, the Regional Court prolonged the applicant's detention on 29 June 2004 (until 31 December 2004), 27 December 2004 (until 30 June 2005) and 23 June 2005 (until 30 October 2005). In addition to the reasons invoked in its decision of 10 February 2004, the Regional

1. The Court of Appeal relied on the decision of the Supreme Court of 19 November 1996, no. IV KZ 119/96, published in OSP 1997 no. 4, item 74.

Court relied on the exceptional nature of the case owing to the number of charges and defendants.

25. During the trial the applicant filed numerous but unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention. He maintained that the length of his detention was excessive and that the charges against him lacked a sufficiently strong basis. In a number of decisions refusing his applications for release (of 20 May 2003 and 20 January 2004), the Regional Court relied on the severity of the anticipated penalty. That factor, in the court's view, justified the conclusion that the applicant might attempt to obstruct the proceedings by absconding or interfering with witnesses. On that basis the Regional Court considered that other preventive measures would not be sufficient to secure the proper conduct of the proceedings.

26. On 21 March 2005 the trial court made a severance order with a view to expediting the proceedings, and thereafter four defendants (J.N., G.P., Z.S. and Z.C.), who in the meantime had been released from detention, were to be tried separately.

27. By June 2005 the trial court had held over 150 hearings and heard more than 400 witnesses.

28. After 20 June 2005 no hearing was held due to the serious illness of the judge rapporteur. On 21 September 2005 the President of the Criminal Section IV of the Gdańsk Regional Court assigned a new judge rapporteur. Consequently, the trial had to commence *de novo*.

29. On 20 October 2005 the Regional Court ordered the applicant's release under police supervision. It found that continued application of the most severe preventive measure was no longer justified since the trial had to commence *de novo*.

30. On 24 November 2005 the trial court made a further severance order and split the case into eleven separate cases.

31. On 19 September 2006 the Gdańsk Regional Court held that it had no jurisdiction to hear the case of the applicant and some other defendants and referred it to the Poznań Regional Court. On 29 January 2007 the latter court objected to the Gdańsk Regional Court's decision and referred the jurisdiction dispute to the Poznań Court of Appeal. On 13 February 2007 the Court of Appeal ruled that the applicant's case was to be heard by the Gdańsk Regional Court. It held that the referral of the case to the Poznań Regional Court at this stage of the proceedings would lead to unacceptable delays. It further noted that the case had lain dormant before the Gdańsk Regional Court from 24 November 2005 to 19 September 2006.

32. It appears that the proceedings against the applicant are still pending before the first-instance court.

B. The applicant's complaint against the unreasonable length of proceedings

33. On 3 November 2004 the applicant filed with the Gdańsk Court of Appeal a complaint about a breach of his right to a trial within a reasonable time and asked for compensation. He relied on section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act").

34. The applicant submitted that the hearings in the case had been short and that a significant number of them had been cancelled. He further referred to numerous absences of witnesses and the fact that the trial court had failed to enforce discipline against those witnesses who had failed to appear. Lastly, he submitted that the trial court had refused his request for a severance order in respect of the charges against him.

35. On 28 December 2004 the Court of Appeal dismissed his complaint as unfounded, having regard to the criteria set out in section 2 § 2 of the 2004 Act, namely the conduct of the court and of the parties, the nature of the case, its factual and legal complexity and what was at stake in the proceedings for the complainant.

36. It admitted that some hearings had been short, but that had been due to the witnesses' absence or the need to take into account the defendants' health problems. However, there had been a number of hearings in the course of 2004 which had lasted until the late afternoon. Overall, the Court of Appeal considered that the isolated cases of hearings which had not been well prepared in advance could not undermine the substantial efforts of the trial court in handling the case. Furthermore, it considered that it could not be said that the exceptional cancellation of some hearings pointed to inactivity on the part of the trial court.

37. The Court of Appeal also found that the absences of certain witnesses referred to by the applicant had been justified; in other cases the trial court had taken steps to discipline unjustified absenteeism. It further considered that the joint examination of the charges against the defendants who had collectively committed a crime was justified under domestic law.

38. In conclusion, the Court of Appeal found that given the nature of the case, its complexity and the attitude of the defendants who, by filing numerous unsubstantiated procedural applications, had contributed to the delays in the trial, there was no ground to hold that the proceedings had been unreasonably long.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. The relevant domestic law and practice regarding the imposition of detention on remand (*tymczasowe aresztowanie*), the grounds for its prolongation, release from detention and rules governing other, so-called

“preventive measures” (*środki zapobiegawcze*) at the material time 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.

40. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court's decisions in the 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, and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

41. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, 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.”

42. The Government contested that argument.

A. Admissibility

43. 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

44. The applicant's detention started on 17 March 2000, when he was detained on remand on suspicion of attempted armed robbery. It continued until 20 October 2005 when the applicant was released. Thus, the total period of his pre-trial detention in the present case comes to 5 years, 7 months and 5 days.

45. However, between 3 October 2002 and 29 April 2004 the applicant served a prison sentence which had been imposed on him in other criminal proceedings. This term, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3.

46. Accordingly, the period to be taken into consideration under Article 5 § 3 amounts to 4 years and 9 days.

2. The parties' submissions

(a) The applicant

47. The applicant argued that the length of his pre-trial detention had been unreasonable. In particular, he maintained that the court's decision to examine jointly all the charges against the very many defendants in one set of proceedings had resulted in the protracted examination of the case. In this respect he submitted that he had been charged with the commission of two offences with two defendants (A.L. and J.K.) and that he had had no links with other defendants. The applicant also maintained that his attempted suicide had been caused by the manner in which he had been treated by the trial court.

(b) The Government

48. The Government argued that the period of the applicant's detention had not been excessive. They submitted that his pre-trial detention had been justified by the genuine risk that he would obstruct the proceedings, the gravity of the charges and the severity of the anticipated penalty. The necessity of the applicant's continued detention had been thoroughly examined by the courts which on each occasion had given sufficient reasons for their decisions. The applicant's case had been extremely complex on account of the number of charges and defendants and the volume of evidence.

49. Furthermore, the Government maintained that the defendants, including the applicant, had borne the main responsibility for the length of the trial by lodging numerous ill-founded applications and appeals. Lastly, they maintained that the authorities had displayed the requisite diligence in dealing with the applicant's case.

3. The Court's assessment

(a) General principles

50. The Court recalls that the general principles regarding the right "to trial within a reasonable time or to release pending trial", as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous

judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

51. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the serious nature of the charges against him, (2) the severity of the penalty to which he was liable and the consequential risk that he might obstruct the trial, (3) the risk that the applicant might abscond or interfere with witnesses, given the fact that he had been a member of a criminal gang and (4) the complexity of the case related to the number of defendants and volume of evidence to be heard. The domestic courts also referred to the obstructive behaviour of the defendants aimed at delaying the trial.

52. The applicant was charged with robbery and armed robbery committed in an organised and armed criminal group (see paragraph 9 above). In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, ECHR 2007-... (extracts)).

53. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could initially warrant his detention. In addition, it notes 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 need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new suspects had been identified, constituted relevant and sufficient grounds for the applicant's initial detention.

54. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

55. According to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. They relied in this respect on the Supreme Court's resolution and its construction of Article 258 § 2 of the Code of Criminal Procedure (see paragraph 18 above). However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

Having regard to the above, the Court cannot accept the position adopted by the judicial authorities in the present case, namely that the presumption referred to above would alone, after a certain lapse of time, justify the applicant's continued detention, without the need to indicate any concrete facts supporting the risk of obstruction of the proceedings.

56. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal gang. In this regard, the Court reiterates that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (see, *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention (see, *Celejewski*, cited above, § 37). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, the Court considers that in cases such as the present concerning organised criminal gangs, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused, or might otherwise obstruct the proceedings, is by the nature of things often particularly high. The Court notes that certain delays during the trial were caused by the defendants' obstructiveness (see paragraphs 14, 19 and 22 above).

57. While all those above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. Even if the particular circumstances of the case required detention on remand to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (*Wolf v. Poland*, nos. 15667/03 and 2929/04, § 90, 16 January 2007). In this respect, the Court observes that the applicant was held in custody for 4 years and 9 days.

58. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving members of an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

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

60. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, 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 contested that argument.

62. The period to be taken into consideration began on 17 March 2000 when the applicant was charged with attempted armed robbery. The proceedings are pending before the trial court. They have thus lasted 7 years, 6 months and 10 days for one level of jurisdiction.

A. Admissibility

63. The Government submitted that since the applicant's complaint lodged under the 2004 Act had been dismissed on 28 December 2004, the applicant had a possibility to lodge another complaint about the length of the proceedings after a lapse of 12 months, according to section 14 of that Act. In a new complaint the applicant could have raised his arguments concerning the conduct of the courts after 28 December 2004. Therefore, in the Government's view, the subsequent period should not be taken into account by the Court in the assessment of the overall length of the proceedings.

64. The Court recalls that it has already established that the remedies provided by the 2004 Act were effective in respect of excessive length of criminal proceedings (see *Charzyński v. Poland*, cited above). However, the Court observes that the applicant's complaint was dismissed when the proceedings in his case had already been pending for 4 years and over 9 months. The Court does not consider it necessary for the applicant, in order to comply with the requirements of Article 35 § 1 of the Convention, to lodge a new complaint every 12 months (see *Wolf v. Poland*, cited above, § 62).

65. For this reason, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies with regard to the period after 28 December 2004 must be dismissed.

66. The Court further 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. The parties' submissions

(a) The applicant

67. The applicant submitted that the authorities had been responsible for the delays in the proceedings. He criticised the trial court for having joined all the charges against numerous defendants in one set of proceedings and submitted that he had requested to have his case examined separately but to no avail.

(b) The Government

68. The Government underlined that the case had been extremely complex. It had concerned an organised criminal group and 118 charges brought against 19 defendants. The trial court has heard so far about 400 witnesses. As of April 2006 the case file comprised more than 200 volumes. The Government relied on the volume of evidence obtained by the prosecuting authorities and on the difficulties in conducting the investigation, given the considerable number of defendants and victims, as well as the serious nature of the offences committed by the criminal gang.

69. As regards the conduct of the authorities, the Government maintained that they had shown special diligence required in cases of detained persons, both at the investigative and the judicial phase of the proceedings. The trial court had held hearings at regular intervals, initially three, and subsequently five per month. Some of the hearings had to be adjourned due to the absence of witnesses and defence counsel, but the trial court had taken all available measures to ensure their presence at the hearings. Consequently, the Government maintained that there had been no delays in the proceedings for which the authorities could be held responsible.

70. As to the applicant's conduct, the Government emphasised that the defendants had borne the main responsibility for the length of the proceedings. The conduct of the proceedings was hindered by the excessive exercise of procedural rights by the defendants and their defence counsel. They had lodged hundreds of applications and appealed against every decision, even when they had been informed that the appeal had been inadmissible. The trial court had been required to examine all those applications and the prolongation of the proceedings had thus been inevitable. Due to the defendants' attitude the hearing of evidence could only begin in April 2003. The Government referred in that respect to the Court of Appeal's decisions which had observed that the main reason for the delays in the proceedings until April 2003 had been the defendants' obstructiveness. In order to remedy that situation of intentional prolongation

of the proceedings the trial court had decided to limit the time assigned for submission of procedural motions during every hearing. In the Government's view, the defendants' behaviour justified the conclusion that they had resorted to delaying tactics.

71. As regards the applicant, he had contributed significantly to the length of the proceedings by lodging numerous ill-founded applications and appeals. On many occasions he had challenged the trial court, made applications for a severance order or requested that a different legal-aid counsel be appointed for him.

2. The Court's assessment

72. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

73. The Court accepts the Government's argument that the case before the domestic authorities was undoubtedly complex. This is clearly shown, *inter alia*, by the number of defendants and volume of evidence obtained during the proceedings. During the investigation the prosecuting authorities gathered extensive documentary evidence. Numerous witnesses had to be interviewed. Even before the trial had commenced, the case file numbered 114 volumes, and the number reached 204 volumes by April 2006.

74. As regards the applicant's conduct, the Court observes that he lodged several requests for release and appealed against the court decisions prolonging his detention. It further notes that the defendants in the present case, including the applicant, certainly contributed to the length of the proceedings by having made frequent applications on procedural matters which, inevitably, led to delays in the examination of the case. The defendants' obstructiveness was referred to expressly on a few occasions by the domestic courts (see paragraphs 14, 19 and 22 above). While the applicant's conduct must have generated delays at the trial and cast doubt on his intention to have the proceedings concluded speedily, the Court cannot subscribe to the view that this factor could justify the entire length of the proceedings.

75. As to the conduct of the authorities, the Court notes that the trial court initially held three hearings per month. On 13 March 2002 the Court of Appeal directed the trial court to increase that number to five per month. The Court notes that otherwise hearings were held regularly and when they were adjourned it was normally for reasons not attributable to the court. Furthermore, the trial court took measures to ensure the presence of defence counsel and witnesses at the hearings. On the other hand, the Court cannot but note that following the judge rapporteur's illness and the subsequent

change in the composition of the trial court some time after 21 September 2005 the trial had to commence *de novo*.

76. The Court further observes that on 28 December 2004 the Gdańsk Court of Appeal dismissed as unfounded the applicant's complaint about the breach of his right to a trial within a reasonable time. The Court of Appeal concluded that there had been no delays caused by the trial court's inactivity. The Court considers that the Court of Appeal in examining the applicant's complaint generally applied standards which were in conformity with the principles embodied in the Court's case-law. The Court discerns only one shortcoming in the review carried out by the Court of Appeal, namely that the latter did not regard the fact of the applicant's detention as a relevant factor for directing the trial court to conduct the proceedings with particular diligence.

77. In this connection, it recalls that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see, for example, *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, p. 17, § 24; *Jabłoński v. Poland*, no. 33492/96, § 102, 21 December 2000; *Mõtsnik v. Estonia*, no. 50533/99, § 40, 29 April 2003; *Bąk v. Poland*, cited above, § 81).

78. In this respect, the Court would point out that the duty to administer justice expeditiously was incumbent in the first place on the domestic authorities, especially given that during a substantial part of his trial (4 years and 9 days) the applicant remained in custody. Notwithstanding the significant difficulties which they faced in the present case, the domestic authorities were required to organise the trial efficiently and ensure that the Convention guarantees were fully respected in the proceedings. However, the Court notes that the trial, which has already lasted 6 years and over 4 months, appears to be still pending before the first-instance court.

79. Having regard to all the circumstances of the case and the overall length of the proceedings, the Court considers that the reasonable time requirement of Article 6 § 1 of the Convention has not been respected. Consequently, there has been a violation of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage for both alleged violations. He referred to the deterioration of his health which had resulted from the excessive length of pre-trial detention and the maintenance arrears which had accrued during that time.

82. The Government submitted that the applicant's claims were exorbitant and speculative and should be rejected. In respect of the complaint under Article 5 § 3, they argued that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, should the Court find a violation of Article 5 § 3 and a violation of Article 6 § 1, 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.

83. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. In respect of the non-pecuniary damage, the Court notes that it has found a violation of Article 5 § 3 on account of the excessive length of pre-trial detention and a violation of Article 6 § 1 on account of the unreasonable length of the proceedings. The applicant's claims were submitted in respect of both those violations. The Court considers that the applicant has suffered some non-pecuniary damage which is not sufficiently compensated by the finding of the above violations of the Convention. Considering the circumstances of the case, in particular that the facts which gave rise to both violations overlap to a certain extent and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

84. The applicant also claimed EUR 250 for the costs of photocopying documents and postage incurred in the proceedings before the Court.

85. The Government submitted that the applicant had not produced any documents to confirm his claim.

86. 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 applicant, who was not represented by a lawyer, the sum of EUR 100 under this head.

C. Default interest

87. 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* that there has been a violation of Article 6 § 1 of the Convention;
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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President