



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

FOURTH SECTION

CASE OF MALIKOWSKI v. POLAND

(Application no. 15154/03)

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 Malikowski 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. 15154/03) 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 Tomasz Malikowski (“the applicant”), on 18 April 2003.

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 18 October 2005 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 1968 and lives in Rumia. The application was lodged on his behalf by his common-law wife, Ms Teresa Rohde, who submitted a duly signed written authorisation from the applicant.

A. The criminal proceedings against the applicant

5. On 6 September 1999 the applicant was arrested on suspicion of armed robbery. On 7 September 1999 the Gdańsk District Court remanded him in custody in view of the reasonable suspicion that he had committed a number of armed robberies in an organised criminal group. It held that there was a reasonable risk that the applicant would obstruct the investigation by, *inter alia*, inducing witnesses to give false testimony and relied on the severity of the anticipated penalty. Consequently, it found that remanding the applicant in custody was the only preventive measure which could secure the proper conduct of the investigation.

6. On 18 November 1999 the Gdańsk Regional Court prolonged the applicant's detention until 6 March 2000. It relied on the reasonable suspicion of the applicant having committed the offences in question and the need to take further investigative measures.

7. On 16 February 2000 the Gdańsk Court of Appeal ordered that the applicant be held in custody until 30 June 2000. It held that his continued detention was justified by the serious nature and the scale of the offences in question. Furthermore, it had regard to the need to obtain evidence from many sources.

8. On 20 June 2000 the Gdańsk Court of Appeal prolonged the applicant's detention until 6 September 2000. In addition to the grounds previously invoked, it observed that the applicant's detention was justified by the complexity of the investigation and the likelihood that a severe penalty would be imposed.

9. On 17 August 2000 the Supreme Court extended the applicant's detention until 15 December 2000. It found that the strong suspicion against the applicant of having committed the serious offences in question, the severity of the anticipated penalty and the need to obtain further evidence warranted holding him in custody.

10. Meanwhile, several other persons were charged and detained in connection with the same investigation conducted by the Department of Organised Crime of the Gdańsk Regional Prosecutor's Office.

11. On 13 December 2000 the Gdańsk Court of Appeal prolonged the applicant's detention until 31 March 2001. It reiterated the original grounds given for his detention. Taking into account the nature of the offences, the Court of Appeal added that the fact that the charges against all nine suspects were closely interrelated gave substance to the risk that, once released, they might obstruct the proceedings. It also referred to the particular complexity of the case. Furthermore, it noted that the prolongation of the investigation was due to the fact that new suspects had been identified in the course of the investigation.

12. On 7 March 2001 the Court of Appeal prolonged the applicant's and his 9 co-suspects' detention until 31 May 2001. It held that the original

grounds given for the applicant's detention were still valid and that the need to obtain DNA evidence justified the continuation of that measure.

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

14. On 17 May 2001 the Gdańsk Regional Court ordered that the applicant be detained until 6 September 2001, finding that his detention was necessary in order to prevent him and other 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.

15. 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.

16. On 15 January 2002 the Gdańsk Regional Court dismissed the applicant's request for the presiding judge to withdraw. On 15 January 2003 the applicant and 17 of his co-defendants unsuccessfully challenged the judges and lay members of the trial court.

17. Since on 6 September 2001 the applicant's detention had reached the statutory time-limit of 2 years laid down in Article 263 § 3 of the Code of Criminal Procedure, further prolongation of his detention was ordered by the Gdańsk Court of Appeal. The relevant decisions were given on 22 August 2001 (prolonging his detention until 31 March 2002), 28 March 2002 (extending his detention up to 30 September 2002), 11 September 2002 (ordering his continued detention until 31 December 2002), 18 December 2002 (prolonging that period until 30 June 2003), 25 June 2003 (extending his detention up to 31 December 2003), 17 December 2003 (ordering his continued detention until 30 June 2004), 23 June 2004 (prolonging his detention until 31 December 2004), 15 December 2004 (prolonging his detention until 31 March 2005), 30 March 2005 (extending that period until 30 June 2005) and 22 June 2005 (prolonging his detention until 30 October 2005).

18. In all those decisions the Court of Appeal considered that the original grounds given for the applicant's detention were still valid. It stressed that the applicant's detention was the only measure which could secure the proper conduct of the proceedings in such a particularly complex case, given the nature of the charges, the number of the defendants and the connections between them. In addition, it referred to the volume of evidence to be heard.

19. In its decision of 19 September 2001 the Court of Appeal dismissed the applicant's appeal against the decision of 22 August 2001, prolonging

his detention. It held, *inter alia*, that Article 258 § 2 of the Code of Criminal Procedure alone constituted a sufficient ground for the applicant's detention as he had been charged with an offence which attracted a statutory maximum sentence of at least 8 years' imprisonment. It further found that the applicant's continued detention was the only measure which could secure the proper conduct of the trial, given the fact that he had been charged with the commission of the offences in an organised criminal group.

20. In its decision of 25 June 2003 prolonging the applicant's detention, the Court of Appeal observed that the trial could not be terminated due to obstructiveness on the part of the defendants who had filed numerous requests challenging the trial court. It further considered that although the applicant and other defendants were free to make use of their procedural rights, the abuse of those rights had undoubtedly led to delays in the trial. It also noted that the trial court had taken various procedural steps in order to accelerate the proceedings.

21. In its decision on the applicant's detention of 23 June 2004, the Court of Appeal observed that up to April 2003 the main reason for the delays during the trial was the obstructiveness of the defendants and the abuse of the rights of the defence. It also observed that the trial could be concluded by the end of 2004 provided that the Regional Court endeavoured to organise the trial efficiently.

22. In its decision of 18 January 2005 dismissing the applicant's appeal against the decision of 15 December 2004 prolonging his detention, the Court of Appeal held that Article 258 § 2 of the Code of Criminal Procedure established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It added that the risk of absconding or interfering with witnesses which existed in the present case did not have to be supported by any concrete facts, but resulted from the above presumption¹.

23. In the course of the proceedings the applicant made numerous, unsuccessful applications for release and appealed, likewise unsuccessfully, against refusals to release him and decisions extending his detention. In its decision of 28 August 2002 dismissing the applicant's application for release, the trial court found that according to evidence given by a witness R.G., the applicant had attempted to induce him to give false testimony.

24. 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.

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.

25. 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*.

26. On 20 September 2005 the Court of Appeal prolonged the applicant's detention until 31 January 2006. The applicant appealed against that decision. On 18 October 2005 a different panel of the Court of Appeal quashed the impugned decision and ordered the applicant's release under police supervision. It also imposed on him a prohibition on leaving the country. The Court of Appeal had regard to the fact that the trial had to commence *de novo* and that the applicant had already spent a few years in pre-trial detention.

27. The applicant was released on 19 October 2005.

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

29. By March 2006 the trial court had held some 135 hearings of the 162 which had been scheduled. It heard more than 400 witnesses.

30. It appears that the proceedings are still pending before the first-instance court.

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

31. On 25 January 2005 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").

32. The applicant submitted that the charges against all the defendants had been unjustifiably joined in one set of proceedings. He further referred to numerous absences of witnesses, lawyers and defendants and claimed that many hearings had been cancelled in the course of 2004.

33. On 1 March 2005 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. It held that the joint examination of the charges against the defendants who had collectively committed a crime was justified under the domestic law. The Court of Appeal also found that certain absences referred to by the applicant had been justified, while in other cases the trial court had taken measures to discipline the relevant persons. It further held that certain hearings in 2004 had been cancelled, but for reasons which had not been attributable to the trial court.

34. In conclusion, having regard to the nature of the case, its complexity and the conduct of the parties, the Court of Appeal held that the trial court could not be held responsible for the delays in the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. 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.

36. 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

37. 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.”

38. The Government contested that argument.

A. Admissibility

39. 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

40. The applicant's detention started on 6 September 1999, when he was arrested on suspicion of armed robbery. It continued until 19 October 2005 when the applicant was released. Thus, the total period of his pre-trial detention in the present case comes to 6 years, 1 month and 14 days.

41. However, between 23 September 2003 and 8 February 2006 the applicant served two prison sentences which had been imposed on him in other criminal proceedings. This term, as 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.

42. Accordingly, the period to be taken into consideration under Article 5 § 3 amounts to 4 years and 18 days.

2. The parties' submissions

(a) The applicant

43. The applicant argued that an excessive period of detention, such as the period in the present case, was in itself incompatible with Article 5 § 3 of the Convention, given the principle of the presumption of innocence. He maintained that however strong had been the suspicion against him, it could suffice as a basis for holding him in custody only in the early stages of the proceedings.

44. As regards the risk of collusion and tampering with evidence, the applicant argued that it had not been based on any reliable facts and that, with the passage of time, it had become irrelevant from the point of view of the proper conduct of the trial. He strongly contested the position of the Court of Appeal that the risk of absconding or tampering with evidence did not have to be supported by concrete facts, but resulted from the presumption established in Article 258 § 2 of the Code of Criminal Procedure. The applicant emphasised that the courts had not given sufficient and relevant reasons for his continued detention.

(b) The Government

45. The Government firstly presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime increased both in absolute terms and in relation to other crimes. In 2004 there were 617 indictments in such cases and 220 persons were convicted. They argued that in organised crime cases the authorities were faced with particular problems, relating to the taking and assessment of evidence and various logistical issues.

46. With reference to the present case, the Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences at issue and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed with reference to the fact that he and his co-defendants had acted in an organised criminal gang. The risk that the defendants might obstruct the proceedings or tamper with evidence was aggravated by the fact that they had been members of a tightly-knit organised criminal group. Thus, the domestic courts had considered it necessary to remand the applicant and his co-defendants in custody until all relevant witnesses had been heard.

47. The Government emphasised that the serious nature of the charges as well as the fact that there had been nineteen defendants charged with numerous offences required the authorities to take all necessary measures to secure the proper conduct of the trial. 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 by reason of the volume of evidence.

48. Lastly, the Government maintained that the authorities had displayed the requisite diligence in dealing with the applicant's case.

3. *The Court's assessment*

(a) **General principles**

49. 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**

50. 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.

51. The applicant was charged with numerous counts of armed robbery committed in an organised and armed criminal group (see paragraph 13 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 *Bqk v. Poland*, no. 7870/04, § 57, ECHR 2007-... (extracts)).

52. 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.

53. 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).

54. 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 paragraphs 19 and 22 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, *Ilykov 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.

55. 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. Indeed, the Court notes that the applicant attempted to intimidate a witness (see paragraph 23 above). Furthermore, it accepts that certain delays during the trial were caused by the defendants' obstructiveness and the abuse of the rights of the defence (see paragraphs 20-21 above).

56. 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 18 days.

57. 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.

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

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

59. 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..."

60. The Government contested that argument.

61. The period to be taken into consideration began on 6 September 1999 when the applicant was charged with armed robbery. The proceedings are pending before the trial court. They have thus lasted over 8 years for one level of jurisdiction.

A. Admissibility

62. The Government submitted that since the applicant's complaint lodged under the 2004 Act had been dismissed on 1 March 2005, 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 1 March 2005. 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.

63. The applicant disagreed with the Government. He submitted that, having regard to the reasons put forward by the Court of Appeal in its decision of 1 March 2005, another complaint under the 2004 Act would have had no prospects of success.

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 5 years and nearly 6 months. The Court does not consider it necessary for the applicant, in order to comply with the requirement 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 1 March 2005 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 argued that his case could not be considered complex simply on account of the significant volume of evidence. He maintained that he had not contributed to the prolongation of the proceedings. In this respect, he admitted that he had made frequent use of his procedural rights, but submitted that should not be reproached on that account.

68. Referring to the case-law on the subject, the applicant submitted that the court's excessive workload could not be considered an excuse and that the State was under a general obligation to organise its court system efficiently. The State may be held liable not only for any delay in the handling of a particular case, but also for a failure to increase resources in

response to a backlog of cases and for structural deficiencies in its system of justice that cause delays.

(b) The Government

69. 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 204 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.

70. 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 the defence counsel, but the trial court had taken all available measures to ensure their presence at the hearings. Similarly, the court had taken measures to discipline witnesses who had failed to comply with summonses. Consequently, the Government maintained that there had been no delays in the proceedings for which the authorities could be held responsible.

71. 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 decision of the Court of Appeal of 23 June 2004 which had observed that the main reason for the delays in the proceedings until April 2003 had been the obstructiveness of the defendants and the abuse of the rights of the defence. 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.

72. 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 and requested

that the case be sent back to the prosecution or transferred to another court. At the hearing held on 18 May 2005 the applicant had supported the request of another defendant to read all the documents indicated in the bill of indictment. That request had resulted in significant delay in the proceedings.

The Government concluded that there had been no violation of Article 6 § 1 in the present case.

2. *The Court's assessment*

73. 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).

74. 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 the 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.

75. 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 and the abuse of the rights of the defence were referred to expressly on a few occasions by the domestic courts (see paragraphs 20-21 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.

76. 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*.

77. The Court further observes that on 1 March 2005 the Gdańsk Court of Appeal found, on a complaint by the applicant about the breach of his right to a trial within a reasonable time, that the length of the proceedings had not been excessive. 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.

78. 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; *Bqk v. Poland*, cited above, § 81).

79. 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 18 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 over 6 years and 4 months, appears to be still pending before the first-instance court.

80. 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

81. 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

82. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage for both alleged violations.

83. The Government argued that the applicant's claims in respect of the complaint under Article 5 § 3 were exorbitant. They submitted that in some cases (*Świerzek v. Poland*, no. 9013/02, 10 January 2006; *Pasiński v. Poland*, no. 6356/04, 20 June 2006) in which a similar violation of Article 5 § 3 has been found, the Court refused to make any award under Article 41 in respect of non-pecuniary damage suffered by the applicant. Thus, the Government invited the Court, having regard to the particular circumstances of the present case, to rule that a finding of a violation of Article 5 § 3 constituted in itself sufficient just satisfaction. Alternatively, they submitted that any award made by the Court should be considerably lower than the amount claimed by the applicant.

84. 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. Taking into account that the applicant contributed to the length of the proceedings and 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

85. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court.

86. The Government did not comment.

87. 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. The Court notes the applicant was paid EUR 850 in legal aid by the Council of Europe. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 150 for costs and expenses.

C. Default interest

88. 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 150 (one hundred and fifty 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