



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

FOURTH SECTION

**CASE OF OSIŃSKI v. POLAND**

*(Application no. 13732/03)*

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 Osiński 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. 13732/03) 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 Przemysław Osiński (“the applicant”), on 24 March 2003.

2. 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 1973 and lives in Gdańsk.

### **A. The criminal proceedings against the applicant**

5. On 31 March 1999 the applicant was arrested on suspicion of armed robbery. On 1 April 1999 the Gdańsk District Court remanded him in custody in view of the reasonable suspicion that he had committed armed robbery. It held that there was a reasonable risk that the applicant might abscond and attempt to induce witnesses to give false testimonies.

6. On 24 June 1999 the Gdańsk Regional Court prolonged the applicant's detention until 30 September 1999. It found that the prolongation was justified by the need to obtain and secure evidence from many sources and interrogate a number of other persons who could be charged together with the applicant.

7. On 15 September 1999 the Gdańsk Court of Appeal extended the applicant's detention until 31 December 1999. It found that it was highly probable that he had committed the offence in question. It also relied on the need to obtain various expert reports. Lastly, it held that the severity of the anticipated penalty justified the prolongation of the applicant's detention.

8. Later, several other persons were detained and charged in connection with the same investigation conducted by the Department of Organised Crime of the Gdańsk Regional Prosecutor's Office. The applicant was charged with the commission of 35 robberies and armed robberies.

9. On 8 December 1999 the Court of Appeal ordered that the applicant be kept in custody pending investigation until 30 March 2000. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged. In that respect, it referred to evidence given by A.L., a member of the same criminal group, who acted as a witness against the other suspects. The Court of Appeal further relied on the need to obtain and secure evidence, in particular from experts in ballistics, biology and fingerprints. It stressed that it was also necessary to carry out a reconstruction of the crime and to confront the suspects with each other. It also considered that the scale and nature of the offences in question justified the applicant's continued detention.

10. On 30 March 2000 the Supreme Court prolonged the applicant's detention pending investigation – which had meanwhile exceeded the one-year time-limit set for detention pending the investigation under Article 263 § 2 of the Code of Criminal Procedure – until 30 June 2000. It considered that the case was “particularly complex” given the volume of evidence and the number of charges against the numerous suspects. It also held that there was a reasonable risk that the applicant and other suspects might obstruct the investigation.

11. On 24 May 2000 the Supreme Court ordered that that term should be prolonged further until 15 December 2000. It reiterated the previous grounds given for the applicant's detention and added that the case was very complex, given that six further suspects had in the meantime been charged

and detained in the case and that several other potential suspects were still being sought.

12. Further prolongations of the applicant's detention pending the investigation were ordered by the Gdańsk Court of Appeal on 13 December 2000 (up to 31 March 2001) and 7 March 2001 (up to 31 May 2001). In its decision of 13 December 2000, the Court of Appeal 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. In its decision of 7 March 2001, the Court of Appeal added that the prolongation of detention was justified by the need to obtain DNA evidence.

13. On 15 May 2001 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant was charged with several dozen counts of armed robbery which had been committed in an organised armed criminal group. The bill of indictment specified that the applicant was subject to the rules on recidivism. It 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.

14. 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.

15. During the trial, the Gdańsk Court of Appeal prolonged the applicant's detention several times. The relevant decisions were given on 23 May 2001 (extending his detention up to 31 October 2001), 24 October 2001 (ordering his continued detention until 31 March 2002), 13 March 2002 (prolonging that period until 30 September 2002), 11 September 2002 (extending his detention until 31 December 2002), 18 December 2002 (prolonging his detention until 30 June 2003), 25 June 2003 (prolonging his detention until 31 December 2003), 17 December 2003 (extending that term until 30 June 2004), 23 June 2004 (extending that term until 31 December 2004), 15 December 2004 (ordering his continued 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).

16. 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 defendants and the

connections between them. In addition, it referred to the volume of evidence to be heard.

17. In its decision of 13 March 2002 prolonging the applicant's detention, the Court of Appeal considered that the trial could be terminated by 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 to be removed from the court room. It instructed the trial court to hold more than 3 hearings per month. Furthermore, it 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 might interfere with the proceedings, given the nature of the charges, the severity of the anticipated penalty and the fact that such attempts had been made in the course of the investigation.

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

19. In its decision of 25 June 2003 extending the applicant's detention, the Court of Appeal observed that the trial could not be terminated due to obstructiveness of the defendants who had filed numerous requests challenging the trial court. It further observed 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.

20. 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.

21. 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 tampering with witnesses which existed in the present case did not have to be supported by concrete facts, but resulted from the above presumption<sup>1</sup>.

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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.

22. In its decision of 22 June 2005 the Court of Appeal again referred to the presumption established by Article 258 § 2 of the Code of Criminal Procedure. In its decision of 27 July 2005 dismissing the applicant's appeal against the decision of 22 June 2005 prolonging his detention, the Court of Appeal held that that presumption alone justified the applicant's continued detention. It also held that keeping the applicant in custody was necessary in order to prevent him from interfering with the trial, given the reasonable risk of such interference which flowed from the fact that he had been charged with the commission of the offences in an organised criminal group.

23. 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.

24. On 21 March 2005 the Gdańsk Regional 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, were to be tried separately.

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 19 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”).

32. The applicant submitted that the charges against all the defendants had been unjustifiably joined in one set of proceedings. He claimed that numerous hearings had been cancelled and that the process of taking evidence from witnesses had been lengthy. He also submitted that he had been detained on remand throughout the proceedings and that his applications challenging the trial court had been made in accordance with the provisions of criminal procedure.

33. On 12 January 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.

34. Replying to the applicant's submissions, the Court of Appeal held that the joint examination of the charges against the defendants who had collectively committed a crime was justified under the domestic law. Furthermore, it considered that it could not be said that the exceptional cancellations of some hearings pointed to inactivity on the part of the trial court, bearing in mind the number of hearings held and the fact that they had been scheduled in advance.

35. The Court of Appeal also found that the applicant's complaint relating to the allegedly lengthy process of taking evidence from witnesses was unsubstantiated. It pointed out in this respect that the trial court had disciplined the witnesses who had failed to comply with the summons. The court further held that the defendants had contributed to the length of the proceedings by multiplying their applications in respect of procedural issues that had already been determined. It found that the fact that the applicant had been remanded in custody was not a relevant consideration for the determination of his complaint concerning the allegedly excessive length of proceedings.

36. In conclusion, having regard to the nature of the case and its complexity, the Court of Appeal held that delays in the proceedings could not be attributed to the trial court. On the contrary, the trial had been conducted in a diligent manner.

## II. RELEVANT DOMESTIC LAW

37. 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.

38. 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

39. 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.”

40. The Government, having regard to the Court's case-law concerning the length of pre-trial detention, refrained from taking a position on the admissibility of the complaint.

#### A. Admissibility

41. 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

42. The applicant's detention started on 31 March 1999, when he was arrested on suspicion of armed robbery. It continued until 19 October 2005 when the applicant was released. Accordingly, the period to be taken into consideration amounts to 6 years, 6 months and 21 days.

## *2. The parties' submissions*

### **(a) The applicant**

43. 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.

### **(b) The Government**

44. 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.

45. 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 with which he had been charged 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 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.

46. 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.

47. Furthermore, the Government maintained that the defendants 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

48. 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

49. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three 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 and (3) 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.

50. 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)).

51. 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.

52. 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).

53. 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 21-22 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, *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.

54. 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. In this respect, the Court accepts that certain delays during the trial were caused by the defendants' obstructiveness and the abuse of the rights of the defence (see paragraphs 19-20 above).

55. 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 had spent 6 years and nearly 7 months in pre-trial detention which is a particularly long period.

56. 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.

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

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

58. 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...”

59. The Government contested that argument.

60. The period to be taken into consideration began on 31 March 1999 when the applicant was charged with armed robbery. The proceedings are pending before the trial court. They have thus lasted 8 years and 6 months for one level of jurisdiction.

### A. Admissibility

61. The Government submitted that since the applicant's complaint lodged under the 2004 Act had been dismissed on 12 January 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 12 January 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.

62. 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 10 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).

63. For this reason, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies with regard to the period after 12 January 2005 must be dismissed.

64. 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**

65. The applicant argued that there had been unjustified delays in the investigation and at the trial. 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 that his case be examined separately but to no avail. Eventually, in November 2005 the trial court had split the case into eleven separate cases, referring to the needs of “procedural economy”.

#### **(b) The Government**

66. 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 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.

67. 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.

68. As to the applicant's conduct, the Government emphasised that the defendants had borne the main responsibility for the length of the proceedings. 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.

69. 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 requested 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*

70. 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).

71. 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.

72. 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 19-20 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.

73. 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*.

74. The Court further observes that on 12 January 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.

75. 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).

76. 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 the applicant remained in custody until 19 October 2005, that is for six years and nearly seven months. 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.

77. 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

78. 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**

79. The applicant claimed 6,000 euros (EUR) for each year of the overall period spent in detention on remand in respect of non-pecuniary damage.

80. The Government refrained from taking a position in respect of the applicant's claims regarding the complaint under Article 5 § 3. They also presented their opinion on the applicant's claims related to the complaint under Article 6 § 1.

81. The Court notes that the applicant's claims were limited to his complaint under Article 5 § 3 of the Convention in respect of the excessive length of pre-trial detention and that he did make any claims in respect of the complaint under Article 6 § 1 of the Convention. In those circumstances, the Court sees no reason to make any award in respect of the violation of Article 6 § 1.

82. In respect of the claims concerning Article 5 § 3 of the Convention, the Court considers that the applicant has suffered some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of this provision. Considering the circumstances of the case, in particular the fact that the applicant contributed to the delays in the trial, and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

#### **B. Costs and expenses**

83. The applicant submitted no claim for costs and expenses.

#### **C. Default interest**

84. 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 2,000 (two thousand euros) in respect of non-pecuniary damage, 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 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 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President