



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

FOURTH SECTION

CASE OF KRZYSZTOFIAK v. POLAND

(Application no. 38018/07)

JUDGMENT

STRASBOURG

20 April 2010

FINAL

20/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Krzysztofiak v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 38018/07) 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 Marian Krzysztofiak (“the applicant”), on 8 August 2007.

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

3. The applicant alleged, in particular, that his pre-trial detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention and that the length of the criminal proceedings against him had been excessive.

4. On 9 February 2009 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Gdynia.

A. Criminal proceedings against the applicant and his pre-trial detention

6. On 17 March 2006 the applicant was arrested on suspicion of drug trafficking.

7. On the same date the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody, relying on a reasonable suspicion that he had committed the offence in question. The court indicated that the evidence which had been gathered in the case, in particular the testimonies of other suspects, showed that there was a sufficient probability that the applicant had committed the offences with which he had been charged. It attached importance to the likelihood of a severe prison sentence being imposed on the applicant and the risk that he would attempt to induce witnesses to give false testimony or, by other means, would obstruct the proceedings. The latter risk was considered of the utmost importance in the light of the fact that the case involved a large number of alleged accomplices.

8. An appeal by the applicant against the detention order, likewise his further appeals against decisions extending his detention and all of his subsequent, numerous applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeals, he argued that his lengthy detention had violated the provisions of the Code of Criminal Procedure relating to the imposition of this measure.

9. In the course of the investigation, the applicant's detention was extended on several occasions, namely, on 8 June 2006 (to 2 September 2006), 24 August 2006 (to 2 December 2006) and 16 November 2006 (to 15 December 2006). In their decisions, which also concerned several other suspects, the courts stressed the fact that some of the accused – not the applicant however – had been acting in an organised criminal group. Furthermore, they referred to the fact that, owing to the complexity of the case, the investigation had still not been completed. Lastly, the courts underlined the unique nature of the proceedings involving drug-trafficking, which often took more time because offences and suspects emerged gradually.

10. On 5 December 2006 a bill of indictment was lodged with the Gdańsk Regional Court (*Sąd Okręgowy*). The applicant was charged with drug trafficking. The bill of indictment comprised numerous charges of drug trafficking brought against twenty-one defendants. Although several

defendants were charged with acting as part of an organised criminal group, the applicant himself was not charged with being a member of such a group.

11. On 29 March 2007 the trial court held the first hearing. Between 29 March 2007 and 26 June 2008 the trial court scheduled nineteen hearings, seven of which were adjourned or cancelled for various reasons, such as: the failure of the police to take some of the accused from the detention centres to the court, the summer break, the resignation of one of the defence lawyers and the illness of one of the co-accused.

12. During the court proceedings, Gdańsk Regional Court further extended the applicant's pre-trial detention on several occasions, namely, on 12 December 2006 (to 31 May 2007), an unspecified subsequent date, 25 October 2007 (to 31 January 2008) and 29 January 2008 (to 15 March 2008). The applicant appealed against the last two decisions.

13. On 29 November 2007 and on 12 February 2008 the Gdańsk Court of Appeal (*Sąd Apelacyjny*), in its decisions dismissing the applicant's appeals, underlined the complexity of the case, the severity of the penalty to which the applicant was liable and the particular nature of the proceedings involving drug-trafficking. Having regard to the organised character of the alleged criminal activities, it also held that the applicant's detention was necessary in order to prevent him and the other co-accused from interfering with the proceedings. Finally, referring to Article 5 § 3 of the Convention, it observed that the applicant's detention, although long, was justified on grounds of public interest.

14. Because the length of the applicant's detention had reached the statutory two-year time-limit, as laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), the Gdańsk Regional Court applied to the Gdańsk Court of Appeal, asking for the applicant's detention to be extended beyond that term. The Gdańsk Court of Appeal extended his detention on 20 February 2008 (to 31 March 2008) and 19 March 2008 (to 30 June 2008). The court referred in particular to the need to obtain evidence from several further witnesses.

15. The applicant appealed against the decision of 20 February 2008 but the appeal was dismissed by the Gdańsk Court of Appeal on 11 March 2008.

16. On 26 June 2008 the Gdańsk Regional Court ordered the applicant to be released under police supervision. The court also barred the applicant from leaving the country. It took into account the fact that the trial court had almost finished the taking of evidence and that the risk of collusion had become less significant.

The applicant lodged an interlocutory appeal against the above-mentioned decision, arguing that, before being arrested, he had lived and worked in Denmark and that, by prohibiting him from leaving Poland, he was being prevented from joining his family and taking up his former job.

17. On 16 July 2008 the Gdańsk Court of Appeal upheld the lower court decision to place the applicant under police supervision and prohibit him from leaving the country.

18. The criminal proceedings against the applicant are still pending.

B. Proceedings under the 2004 Act

19. On 17 February 2008 the applicant lodged a complaint with the Gdańsk Court of Appeal under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

The applicant sought a ruling that the length of the proceedings before the Gdańsk Regional Court had been excessive and an award of just satisfaction of 10,000 Polish zlotys (PLN).

20. On 11 June 2008 the Gdańsk Court of Appeal dismissed his complaint as unfounded. It found that, out of about eighteen hearings scheduled in the case, only a few had been adjourned. The court further stated that, in December 2007, no hearing could be scheduled because the applicant had dismissed his legal-aid counsel and had been given time to appoint one of his choice. The Court of Appeal concluded that the proceedings had been conducted with the requisite speed and without undue delay.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including detention during the judicial proceedings

21. The relevant domestic law and practice concerning the imposition of pre-trial detention (*tymczasowe aresztowanie*), the grounds for its extension, release from detention and rules governing other “preventive measures” (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Golek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006) and *Celejewski v. Poland* (no. 17584/04, §§ 22-23, 4 May 2006).

B. Remedies against unreasonable length of proceedings

22. The relevant domestic law and practice concerning remedies for the excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, 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 in its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

23. On 1 May 2009 the Law of 20 February 2009 on amendments to the Law on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o zmianie ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2009 Amendment") entered into force.

24. Pursuant to section 1 of the 2009 Amendment, the amended name of the 2004 Act reads as follows:

"[the Law] on complaints about a breach of the right to an investigation conducted and supervised by a Prosecutor and to a trial within a reasonable time."

25. Following the 2009 Amendment, section 1 of the 2004 Act, in so far as relevant, reads as follows:

"1. The Act stipulates the principles of and the procedure for the lodging of a complaint by a party whose right to a trial within a reasonable time has been breached as a result of an action or the inaction of a court or of the prosecutor conducting or supervising the investigation."

26. Pursuant to section 4 of the amended 2004 Act, in so far as relevant:

"5. If a complaint concerns the unreasonable length of an investigation, it will be examined by the court immediately above the court competent to deal with the case."

27. Section 6 of the amended 2004 Act provides, in so far as relevant:

"3. The complaint may contain a request for the court conducting the proceedings or the prosecutor conducting or supervising the investigation, to take actions in a specific time-limit or to pay suitable just satisfaction as specified in section 12 subsection 4."

28. Section 10 of the amended 2004 Act reads, in so far as relevant:

"2a. If the complaint concerns unreasonable length of the investigation, the competent court informs the State Treasury – the prosecutor immediately above the prosecutor conducting or supervising the investigation – and serves him with a copy of the complaint."

29. Section 12 of the amended 2004 Act provides, in so far as relevant:

"4. If the complaint is justified, the court may, at the request of the complainant, award ... just satisfaction of between 2,000 and 20,000 Polish zlotys to be paid by the State Treasury or by a bailiff, if the proceedings have been conducted by a bailiff."

30. Pursuant to section 14 of the amended 2004 Act:

“A party may lodge a new complaint in respect of the same set of proceedings twelve months after the court has decided on the previous complaint or six months after where the complainant has been remanded in custody during the investigation, or where these are enforcement proceedings or any other proceedings concerning execution of a court's ruling.”

31. Section 2 of the 2009 Amendment lays down the following transitional rules in relation to applications which are already pending before the Court:

“1. Within six months of the date of entry into force of this law, persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to an investigation within a reasonable time as guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may, if their complaint to the Court was lodged in the course of the impugned investigation and if the Court has not adopted a decision concerning the admissibility of their case, lodge a complaint, on the basis of the provisions of this law, that the length of the proceedings was unreasonable. .

2. A complaint lodged under subsection 1 shall indicate the date on which the application was lodged with the Court.

3. The relevant court shall immediately inform the Minister of Foreign Affairs of any complaints lodged under subsection 1.”

THE LAW

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

32. The applicant complained that the length of his pre-trial detention 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.”

33. The Government contested that argument.

A. Admissibility

34. The Court notes that the Government raised a preliminary objection that the applicant had failed to exhaust the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he did not appeal against some of the decisions extending his detention.

35. In the present case, the applicant lodged an appeal against the decision of 17 March 2006, which had ordered his pre-trial detention, and against numerous other decisions which had extended his detention. He also lodged requests for the detention order to be lifted or for a more lenient preventive measure to be imposed (see paragraph 8 above). The Court considers that the purpose of the remedy used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case this remedy constituted an adequate and effective remedy within the meaning of Article 35 of the Convention as its aim was to obtain his release. It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, by contrast, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007).

36. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in previous cases against Poland (see *Tomecki v. Poland*, no. 47944/06, §§ 19-21, 20 May 2008, and *Buta v. Poland*, no. 18368/02, §§ 25-27, 28 November 2006) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

37. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. 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. Period to be taken into consideration

38. The applicant's detention started on 17 March 2006, when he was arrested on suspicion of drug trafficking. On 26 June 2008 the applicant was released from custody and placed under police supervision.

Accordingly, the period to be taken into consideration amounts to two years, three months and nine days.

2. The parties' submissions

(a) The applicant

39. The applicant submitted in general terms that he had been kept in pre-trial detention for an unjustified length of time. He argued that the length of his pre-trial detention meant that it could no longer be considered a temporary measure but that it had amounted to the serving of a prison sentence.

(b) The Government

40. The Government submitted that the applicant's detention had satisfied all the criteria laid down in the Court's case-law.

41. Firstly, they pointed out that the evidence which had been obtained in the proceedings had indicated that there was a strong likelihood that the applicant had committed the crimes in question. Secondly, the charges brought against him concerned numerous offences which had been committed in connection with an organised criminal group, for which the applicant faced a heavy sentence. Thus, bearing in mind the seriousness of the charges and the sentence he faced, the applicant's detention had been justified.

42. The Government further argued that the aforementioned circumstances had remained valid for the whole term of the applicant's detention.

3. The Court's assessment

(a) General principles

43. The Court reiterates 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

44. 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 offences with which he had been charged, (2) the severity of the penalty to which he was liable, (3) the need to obtain extensive evidence and (4) the need to secure the proper conduct of the proceedings.

45. The Court accepts that the reasonable suspicion that the applicant had committed the serious offences he was charged with could initially warrant his detention. In addition, it considers 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 detention at the early stages of the trial.

46. However, with the passage of time those grounds inevitably became less and less relevant. The Court must then establish whether the other

grounds adduced by the judicial authorities were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

47. The Court notes that the judicial authorities relied heavily on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. According to them, that likelihood created a presumption that the applicant would obstruct the proceedings. In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of pre-trial detention (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

48. As regards the risk that the applicant would obstruct the proceedings, the Court is not persuaded that it constituted a valid ground for the entire length of his pre-trial detention. Firstly, it notes that the Gdańsk District Court, when originally remanding the applicant in custody, made only a general reference to the risk that the applicant would tamper with evidence. Secondly, the Court notes that the relevant decisions did not contain any argument capable of showing that these fears were well-founded. Such a generally formulated risk, flowing from the nature of the offences with which the applicant had been charged, might possibly be accepted as the basis for his detention at the initial stages of the proceedings. Nevertheless, in the absence of any other factor capable of showing that the risk of his influencing witnesses actually existed, the Court cannot accept that ground as a justification for holding the applicant in custody for the entire period in question.

49. The Court agrees with the Government that the criminal case against the applicant can be considered complex, regard being had to the nature of the charges and the scope of the evidence to be taken. The Court's attention has been drawn in particular to the significant number of those charged (see paragraph 10 above). However, it appears that the authorities referred to the complexity of the case in a general manner and failed to indicate how the nature of the case had required the applicant's continued detention. The Court 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 who had been charged with acting as part of an organised criminal group. However, the applicant himself was not charged with being a member of such a group (see paragraph 10 above). Consequently, this circumstance was not relevant for the assessment of his situation.

50. In these circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” or “sufficient” to justify keeping the applicant in detention for two years, three months and nine days. It is not therefore necessary to examine whether the proceedings were conducted with special diligence.

51. In view of the foregoing, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

52. The applicant further 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...”

53. The Government contested that argument.

54. The period to be taken into consideration began on 17 March 2006 when the applicant was arrested and has not yet ended. It has thus lasted three years and eleven months for one level of jurisdiction.

A. Admissibility

55. The Government submitted that the applicant had not exhausted the remedies available to him under Polish law. In this connection they maintained that, since 1 May 2009, the date on which the amendment to the 2004 Act entered into force, it had been possible for the applicant to seek compensation for the damage resulting from the excessive length of the investigation. The Government further submitted that the applicant had not lodged a claim with the civil courts under section 16 of the 2004 Act in conjunction with Article 417 of the Civil Code seeking compensation for damage suffered as a result of the excessive length of the proceedings.

56. The applicant contested the Government's arguments. First, he submitted that he had already lodged an unsuccessful complaint under the 2004 Act. He further argued that he had not been able to lodge an action under section 16 of the 2004 Act in conjunction with Article 417 of the Civil Code because it was clear from its wording that only a party which had not lodged a complaint under section 5 of the 2004 Act may claim damages under the above-mentioned provisions of the Civil Code. Finally, he noted that, under Article 417 of the Civil Code, a party may only claim pecuniary damage.

57. The Court notes that the applicant lodged a complaint concerning the length of the proceedings with the Gdańsk Court of Appeal under section 5 of the 2004 Act and it was dismissed (see paragraph 20 above).

58. The Court has already examined the remedies provided under section 5 of the 2004 Act for the purposes of Article 35 § 1 of the Convention and found them effective in respect of complaints concerning

the excessive length of judicial proceedings in Poland (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-43, and *Michalak v. Poland* (dec.), no. 24549/03, §§ 37-44).

59. Furthermore, the Court has also held that, having exhausted the available remedy provided by the 2004 Act, an applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland*, no. 18036/03, § 26, 10 October 2006, and *Jagiello v. Poland*, no. 59738/00, § 24, 23 January 2007).

60. Finally, the Court observes that the applicant could not have lodged a complaint under section 2 of the 2009 Amendment because he had lodged his complaint with the Court after the investigation in the criminal proceedings against him had already ended. Therefore, the remedy provided by the transitional rules was not relevant in the particular circumstances of the present case.

61. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

62. 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

63. 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

64. The Court firstly observes that the case could be considered complex, regard being had to the fact that it involved a number of defendants and voluminous evidence. However, it considers that this in itself cannot justify the overall length of the proceedings.

65. As regards the conduct of the applicant, the Court observes that although the applicant had dismissed his legal-aid counsel in December 2007 which prevented the trial court from scheduling a hearing during that month (see paragraph 20 above), it cannot be established that the applicant substantially contributed to the delays in the proceedings.

66. With respect to the conduct of the authorities, the Court considers that the investigation was completed by the prosecution authorities within a relatively short period of time. The Court further notes that more than one third of the hearings scheduled by the trial court during the first two years

of the judicial proceedings was adjourned or cancelled (see paragraph 11 above).

67. The Court would point out that the duty to administer justice expeditiously was incumbent in the first place on the domestic authorities. Notwithstanding the significant difficulties which they faced in the present case due to its complexity, the domestic authorities were required to organise the trial efficiently and ensure that the Convention guarantees were fully respected in the proceedings. Moreover, the Court notes that the proceedings, which have already lasted almost four years, are still pending before the first-instance court.

68. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The applicant further complained in substance under Article 6 that the criminal proceedings against him had been unfair. In that respect he submitted that the proceedings had been based only on the testimonies of one of the co-accused. Invoking Article 8 of the Convention, he also complained that his correspondence had been censored by the prison authorities. Finally, the applicant alleged that his right to respect for family life had been violated because, throughout his detention, he had spoken on the telephone with his wife and children only three times.

70. As regards the complaint concerning the alleged unfairness of the criminal proceedings, the Court notes that the relevant proceedings against the applicant are still pending before the first-instance court. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention as being premature.

71. As regards the remainder of the applicant's complaints, the Court has examined them as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate his complaints. In particular, in respect of the applicant's complaint concerning the alleged censorship of his correspondence, the Court observes that the applicant has failed to substantiate his allegations, as he did not submit copies of the allegedly censored letters. Furthermore, the letters in his file do not show any signs of censorship or any other form of interference.

72. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

73. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. The parties' submissions

1. The applicant

74. The applicant did not submit any observations concerning this provision.

2. The Government

75. The Government referred to the arguments submitted previously in the case of *Figas v. Poland* (no. 7883/07, §§ 41-44, 23 June 2009).

76. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which were and had been undertaken by them to solve the problem of the length of detention during judicial proceedings, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to obey the Court's judgments.

B. The Court's assessment

77. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 58 et seq., with further references) the Court held that the 2007 Resolution of the Committee of Ministers taken together with the number of judgments already delivered and of pending cases raising an issue of excessive detention incompatible with Article 5 § 3 had demonstrated that the violation of the applicant's right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which had affected, and may still affect in the future, an as yet unidentified but potentially considerable number of persons charged in criminal proceedings.

78. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant's continued detention with relevant and sufficient reasons (see paragraphs 50-51 above). Consequently, the Court sees no reason to diverge from its findings made in *Kauczor* as to the

existence of a structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

81. The Government submitted that the applicant's claim for just satisfaction was groundless in the light of the circumstances of the case.

82. The Court considers that the applicant must have sustained non-pecuniary damage on account of the protracted length of the proceedings. The Court further finds that the applicant has suffered non-pecuniary damage by reason of the length of his detention, which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,100 under this head.

B. Costs and expenses

83. The applicant did not make any claim for costs and expenses involved in the proceedings.

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 complaints under Article 5 § 3 of the Convention concerning the unreasonable length of the applicant's pre-trial detention and under Article 6 § 1 of the Convention concerning the unreasonable length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* 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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,100 (three thousand one hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 20 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President