

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

FOURTH SECTION

CASE OF WEREDA v. POLAND

(Application no. 54727/08)

JUDGMENT

STRASBOURG

26 November 2013

FINAL

26/02/2014

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



In the case of Wereda v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 54727/08) 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 Henryk Wereda ("the applicant"), on 5 November 2008.

2. The applicant was represented by Mr A. Baszkowski, a lawyer practising in Poznań. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant complained of a delay in his release from prison following the domestic court's decision ordering his release from pre-trial detention and alleged that his pre-trial detention had exceeded a "reasonable time" within the meaning of Article 5 § 3 of the Convention.

4. On 26 January 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Gdynia. He is a naval officer.

A. The first set of proceedings against the applicant (case no. So 27/04, subsequently registered under no. So 4/05)

6. The applicant was arrested on 1 July 2001. By a decision of 2 July 2002 the Poznań District Military Court (*Sąd Garnizonowy w Poznaniu*) remanded the applicant in custody for three months on suspicion of accepting bribes in connection with his professional activities and heading an organised criminal group (case no. So 4/05). The decision was stated to be justified by the strong evidence against the applicant, the gravity of the offences with which he had been charged and by the severity of the penalty which could be imposed on him.

7. On 25 July 2002 the Supreme Court (*Sąd Najwyższy*) appointed two experts with a view to establishing whether the applicant could be held criminally liable. Subsequently, on 14 August 2002 that court lifted the detention order and ordered the applicant's release on health grounds, as he had been diagnosed as suffering from severe depression and was considered likely to attempt to commit suicide if incarcerated. The court suspended the applicant from duty.

8. On 7 March 2005 the indictment against the applicant was lodged with the Poznań Regional Military Court. Hearings in the case were subsequently held on 27 April, on 23 and 24 August, on 6 and 7 December 2005 and on 10 and 11 January 2006. On 23 August 2005 the court remanded one of the applicant's co-accused in custody.

9. On 21 August 2007 the president of the bench examining the applicant's case requested that he should be allowed to recuse himself from the proceedings. By a decision of the Poznan Regional Military Court dated 22 August 2007 his recusal was accepted. The court noted that that judge was sitting on the bench dealing with another case against the applicant in which the prosecution had submitted the same evidence in support of separate charges (No. So 9/06).

10. On 10 September 2007 the applicant's case was joined with another case against him pending at that time. The new case was registered as No. So 4/05.

B. The second set of proceedings (case no. So 20/06, subsequently renamed no. So 31/07)

11. On 5 February 2006 the applicant was arrested in connection with the second case against him. He was charged with the offences punishable under Article 258 § 3 (leadership of an organised criminal gang), Article 228 § 1 (receiving bribes) and Article 228 § 3 (bribery) of the Criminal Code.

12. An expert opinion dated 6 February 2006 concluded that the applicant's remand in custody was compatible with his health and that he

was able to take part in the proceedings. On the same date the Poznań Regional Military Court remanded him in custody on suspicion of heading an organised criminal gang and having committed multiple counts of fraud, embezzlement, uttering threats and accepting bribes. The case was registered under case number So 20/06. The reasons given for the decision to detain the applicant were the strong evidence against him, the severity of the penalty which could be imposed and the risk that he would attempt to induce the witnesses to give false testimony or to otherwise obstruct the proceedings. The latter risk was considered of the utmost importance in the light of the fact that the case involved a great number of alleged accomplices. The applicant challenged this decision. His appeal was dismissed on 8 March 2006. On 25 April 2006 the Poznań Regional Military Court extended the applicant's detention for a further three months. The court referred to concrete pieces of evidence which, in the court's view, supported the suspicion against the applicant, including the testimonies given by numerous other suspects, both those who had acknowledged their involvement in the fraud scheme and those who continued to deny it. It further noted that the case was very complex as it concerned many charges brought against numerous suspects. In noted that in the light of the evidence gathered up till that moment it was likely that new circumstances concerning the alleged fraud scheme, and in particular the applicant's alleged role in it, would come to light.

13. On 20 July 2006 a new indictment against the applicant was lodged with the Poznań Regional Military Court. On 27 July 2006 the court extended the applicant's detention for three months. The court referred to numerous pieces of evidence which pointed to his likely involvement in the fraud scheme. It noted that it was likely, in the light of that evidence, that he had played a leading role therein. It was necessary to maintain his detention in order to prevent him from exerting pressure on his co-accused and also on other persons who had not been covered by the bill of indictment but who could also have participated in the scheme. On 23 August 2006 hearings were scheduled for 27 and 28 September 2006. On 27 September 2006 the case against the applicant and his accomplices (no. So 20/06) was divided into two separate cases. A judgment in the case against his accomplices (no. So 20/06) was given on the same date. All the accused pleaded guilty. The court scheduled hearings in the applicant's case (no. So 34/06) for 20 and 21 November 2006.

14. Subsequently, the applicant's detention was extended by numerous decisions, all of which were upheld on appeal. In the decision of 19 October 2006 the justification given for the extension was the strong evidence against him, the fact that he ran the risk of receiving a severe sentence and that he presented a risk of attempting to induce the witnesses to give false testimonies or to otherwise obstruct the course of the proceedings.

15. Subsequent hearings were held on 20 and 21 November 2006 and on 2 January 2007. On 2 January 2007 the court extended the applicant's detention, referring to the same grounds as in its decision of 19 October 2006 (see paragraph 14 above).

16. On 13 February 2007 the Poznan Regional Military Court convicted the applicant of a number of offences and sentenced him to four years' imprisonment. The period of time spent in pre-trial detention from 5 February 2006 until 13 February 2007 was counted towards the sentence. The court extended his detention on that date and again later on 10 April 2007, as under the provisions of Polish law detention after a sentencing judgment of a first-instance court was still regarded as pre-trial detention.

17. On 31 May 2007 the Supreme Court's Military Chamber quashed the first-instance judgment and remitted the case. On 17 July 2007 the applicant's detention was extended again. The court first noted that the grounds on which the decision to keep him in detention had been taken, had not ceased to apply. It further observed that, if released, the applicant could exert pressure on witnesses who had given testimony against him. The court listed the names of these witnesses. It was further of the view that the alleged principal role of the applicant in the organisation and running of the criminal group was also relevant for the purposes of the decision to maintain him in detention; the more so as it was likely that a severe sentence would be imposed on him. On 10 September 2007 both cases against the applicant (nos. So 4/05 and So 31/07) were joined to be examined as case no. So 4/05.

C. Proceedings in case no. So 4/05

18. Subsequent hearings were held on 23 October, 22 and 27 November and 6 December 2007. On 4 January 2008 the applicant applied for release. He referred, *inter alia*, to Article 5 § 3 of the Convention and submitted that his detention had exceeded a reasonable time. As the court considered that the applicant should be released on bail, on 8 January 2008 the applicant was obliged to state his position concerning the mortgage which had been submitted to secure his bail. At a court session held on 9 January 2008 the applicant's wife agreed that her and her husband's property would serve as security. The court fixed a deadline for arranging bail for 21 January 2008. As the relevant formalities had not been complied with by that date, on 4 February 2008 the applicant's pre-trial detention was extended once more. On the same date the court dismissed a request for release submitted to it by the applicant on 31 January 2008. The applicant appealed. On 27 February 2008 the Supreme Court amended the contested decision and ordered that the applicant be released on bail. As the applicant failed to deposit the required amount within the indicated time-limit, on 30 April 2008 his pre-trial detention was again extended. The applicant appealed on 5 May 2008.

19. On 19 May 2008 the Supreme Court decided to release the applicant and to place him under police supervision with a prohibition on leaving the country. The release order was given by the Supreme Court on 19 May 2008 at an unspecified time. It was sent to the prison by post as a priority letter on the same date.

20. The applicant was released on 21 May 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

21. The relevant domestic law and practice concerning the imposition of remand in custody (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Gołek v. Poland*, no. 31330/02, §§ 27–33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22–23, 4 August 2006.

22. Article 552 of the Code of Criminal Procedure provides:

> "1. An accused who, as a result of the reopening of proceedings or an appeal on points of law, has been acquitted or re-sentenced under a more lenient provision, shall be entitled to receive from the State Treasury compensation for the pecuniary and non-pecuniary damage which he has suffered as a result of having served all or part of the sentence unjustifiably imposed on him.
>
> 2. The provisions of paragraph 1 shall also be applicable if, after the sentencing judgment has been reversed or declared null and void, the proceedings have been discontinued by reason of material circumstances not duly considered in prior proceedings.
>
> 3. A right to compensation for pecuniary and non-pecuniary damage shall also arise if a preventive measure has been applied under the conditions specified in paragraphs 1 and 2.
>
> 4. A right to compensation for pecuniary and non-pecuniary damage shall also arise in the event of clearly unjustified (niewątpliwie niesłuszne) pre-trial detention or arrest."

B. Execution of a decision granting release from pre-trial detention

23. At the material time, when a decision granting release from pre-trial detention was given, the defendant required to be released on completion of the necessary administrative formalities as specified in the Ordinance of the Minister of Justice of 13 January 2004 on Administrative Acts concerning the Execution of Pre-Trial Detention and Sentences and Coercive Measures resulting in Deprivation of Liberty (*rozporządzenie Ministra Sprawiedliwości w sprawie czynności administracyjnych związanych z*

wykonywaniem tymczasowego aresztowania oraz kar i środków przymusu skutkujących pozbawieniem wolności).

24. Paragraph 3 of that Ordinance stated, in so far as relevant:

> "All administrative formalities shall be carried out without delay (*niezwłocznie*) ... This concerns in particular (...) transmission of information and official notifications and release."

25. Paragraph 6 (1) of the Ordinance provided *inter alia* that a release order served on the detention centre by way of ordinary electronic mail or (unless otherwise provided for) telefax could not be executed. However, this provision was not applicable if the document transmitted by electronic mail was signed with a certified electronic signature (paragraph 6 (3)).

Paragraph 111(2) provided that a detention centre could release a person remanded in custody, *inter alia*, after receiving a certified copy (*odpis*) of a release order given by the competent court. Pursuant to paragraph 111(4) release was to be effected on the date of service of that order on the detention centre.

26. On 4 October 2011 the Constitutional Court gave a decision concerning a preliminary question referred to it by a domestic court (P 9/11). That court requested the Constitutional Court to declare paragraphs 6 (1) and 111 (4) of the 2004 Ordinance contrary to the constitutional guarantees of personal liberty and security and to Article 5 paragraphs 1 a) – c) and 4 of the Convention. The Constitutional Court discontinued the proceedings because in the circumstances of the case the preliminary question was not directly relevant to the decision to be given by the requesting court.

27. On the same date the Constitutional Court delivered another ruling with a view to presenting to the Minister of Justice its view on the deficiencies of the Ordinance (S 1/11). It was of the opinion that the provisions of the Ordinance did not guarantee prompt release of a detainee following a court decision. In particular, the obligation to serve a certified copy (*odpis*) of the original of a court order for a detainee's release from custody on the detention centre, in conjunction with the express prohibition on release of detained persons on the basis of orders served by way of ordinary electronic mail or transmitted by fax, was no longer justified in the light of the development of information and communication technologies. According to the Constitutional Court that situation was in breach of the Convention standards. The Constitutional Court also held that legislative measures to rectify these shortcomings were called for with a view to addressing problems arising in connection with delays in the release of detainees following a relevant court order.

28. A new Ordinance was subsequently enacted on 2 October 2012.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

29. The applicant complained of a delay of two days in his release from prison following the Supreme Court's decision of 19 May 2008. He relied on Article 5 § 1 of the Convention, which reads, in its relevant part, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...
>
> (a) the lawful detention of a person after conviction by a competent court;"

A. Admissibility

30. The Government were of the view that the applicant had failed to exhaust relevant domestic remedies. He should have had recourse to Article 552 § 4 of the Code of Criminal Procedure. He could have claimed compensation in respect of his detention from 19 to 21 May 2008.

They further submitted that a civil action for the protection of personal rights under Articles 23, 24 and 448 of the Civil Code had been a relevant remedy in respect of unjustified detention after the Supreme Court had ordered his release on 19 May 2008.

31. The Court reiterates that Article 35 § 1 of the Convention requires that the only remedies to be exhausted are those that are available and sufficient to afford redress in respect of the breaches alleged. The purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, *inter alia*, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Lakatos v. Czech Republic* (dec.), no. 42052/98, 23 October 2001).

32. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Orchowski v. Poland*, no. 17885/04, § 105, 22 October 2009, and *Norbert Sikorski v. Poland*, no. 17599/05, § 108, 22 October 2009). The development and availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (*Mikolajová v. Slovakia*, no. 4479/03, § 34, 18 January 2011). The Government's arguments clearly carry more weight if relevant

examples from national case-law are provided (*Sakhnovskiy v. Russia* [GC], §§ 43-44; *Toziczka v. Poland*, no. 29995/08, § 26, 24 July 2012).

33. Turning to the circumstances of the present case, the Court notes that the Government failed to refer to any examples of domestic case-law showing that the courts had allowed compensation claims under either of the provisions referred to in the context of pre-trial detention which continued for a number of days after a release order had been given by a court. It has not therefore been shown that in the circumstances of the present case the remedies relied on by the Government offered reasonable prospects of success.

34. The Court further notes that it has already found, in the case of *Mamełka v. Poland*, no. 16761/07, §§ 23–25, 17 April 2012 that compensatory remedies available under the provisions of the Civil Code were not effective in respect of belated release from detention.

35. The Court accordingly finds that the Government have failed to show, with reference to established case-law in cases similar to the applicant's, that the remedies to which they referred were sufficiently certain not only in theory but also in practice.

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. The Government refrained from taking a position on the merits of this complaint.

38. The Court reiterates that any detention must be lawful. The words "in accordance with a procedure prescribed by law" essentially refer to domestic law and lay down an obligation to comply with its substantive and procedural provisions, but also require that any measure depriving the individual of his or her liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33, and *Lukanov v. Bulgaria*, 20 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II).

39. The list of exceptions to the right to liberty secured in Article 5 § 1 of the Convention is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim and purpose of that provision. The Court must, therefore, scrutinise complaints of delays in release of detainees with particular vigilance (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311; *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports* 1997-IV; *K.-F. v. Germany*, 27 November 1997, § 70, *Reports* 1997-VII; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Nikolov*

v. Bulgaria, no. 38884/97, § 80, 30 January 2003; *Ladent v. Poland*, no. 11036/03, § 83, 18 March 2008).

40. Turning to the circumstances of the present case, the Court notes that once the Supreme Court decided to lift the detention order, the applicant had the right to be released without delay, as provided for in the Ordinance of the Minister of Justice of 13 January 2004 and on completion of the necessary formalities (see paragraphs 23-24 above). On 19 May 2008 the Supreme Court ordered his relase from custody. The applicant was released two days later, on 21 May 2008.

41. The Court observes that although the applicant's continued detention following the final decision of the Supreme Court ceased to be justified, he could not have expected to be released instantly. The Court has previously accepted that, in certain circumstances, there may be some limited delay before a detained person is released. Practical considerations relating to the running of the courts and the completion of administrative formalities by the prison administration mean that the execution of such a court order may take time, which, nevertheless, should be kept to a minimum and, in any event, not exceed several hours (see *Quinn*, cited above, § 42; *Giulia Manzoni*, cited above, § 25; *Labita*, cited above, § 171; and *Nikolov*, cited above, § 82). The Court found a violation of Article 5 § 1 of the Convention in the cases of *Ladent v. Poland*, no. 11036/03, 18 March 2008 and *Mamełka v. Poland*, cited above, where the applicants had been released, respectively, three days and seven days after the release orders had been given. Likewise, a breach of the same provision was found in a case where more than forty-eight hours had elapsed between the court order and the applicant's release (*Gębura v. Poland*, no. 63131/00, § 35, 6 March 2007).

42. The Court notes that the Ordinance of the Minister of Justice of 13 January 2004, applicable at the material time, set out in paragraph 3 a general principle that all administrative formalities had to be carried out without delay, in particular those concerning transmission of information and official notifications and related to the release of a detainee (see paragraph 24 above). The Court reiterates that it is incumbent on the respondent Government to provide a detailed account of the relevant events (see, *Labita,* cited above, § 170). In this connection, the Court notes that in their observations the Government did not present a timeline of the administrative formalities completed for the purposes of the applicant's release. The Court observes in this connection that a certified copy of the Supreme Court's order of 19 May 2008 was dispatched to the prison by post as a priority letter on the same date (see paragraph 19 above). The applicant was released two days later.

43. It has not been argued, let alone shown, that any efforts were made in order to secure the speedy service of a certified copy of the Supreme Court's order on the prison administration as required by the 2004 Ordinance. The provisions of the 2004 Ordinance expressly prohibited the

release of persons deprived of their liberty on the basis of any other document than a certified copy. The Ordinance stated that neither service of a release order by ordinary electronic mail nor by telefax could serve as a valid basis for releasing a detained person.

It is relevant for the assessment of the case to note that the Constitutional Court, in its ruling of 4 October 2011 addressed to the Minister of Justice, criticised the provisions of the 2004 Ordinance. It noted that the Ordinance did not guarantee the prompt release of a detainee following a court decision. In particular, it was of the view that the obligation to serve a certified copy (*odpis*) of the original of a court order for a detainee's release from custody on detention facilities was no longer justified in the light of the development of information and communications technologies.

44. It is not for the Court to pronounce on the form that the service of an order for release should take in order to be considered as a lawful and sufficient basis for release of a detainee. However, the paramount importance of the right to liberty imposes on the authorities a duty to do away with organisational shortcomings attributable to the State which may occasion unjustified deprivation of liberty (see *Gębura,* cited above, § 35), including in respect of prompt service of judicial decisions authorising release of detained persons. In the Court's view, the relevant administrative formalities should in the present case have been carried out more swiftly. It has not been shown that the authorities attempted to keep to a minimum the delay in implementing the decision to release the applicant.

45. There has accordingly been a violation of Article 5 § 1 of the Convention on that account.

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

46. 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."

A. Admissibility

1. Exhaustion of domestic remedies

47. The Government first submitted that the applicant had appealed against all decisions given in his case and imposing or extending periods of his detention. He had also filed a number of requests for release.

48. They further argued that the applicant could have lodged a constitutional complaint with the Constitutional Court. He should have

argued that Article 263 of the Code of Criminal Procedure was incompatible with the Constitution in so far as it did not provide for any limits on extensions of detention by the Courts of Appeal. In a number of its judgments the Constitutional Court had already held that certain elements of this provision were incompatible with the Constitution. Had a constitutional complaint been successful, the applicant could subsequently have made a request to have the proceedings concerning the extension of his detention reopened or to have the relevant decision quashed. The Government further averred that once the Constitutional Court had ruled on the non-constitutionality of that provision, it would have been open to the applicant to claim compensation for manifestly unjustified detention under Article 552 § 4 of the Code of Criminal Procedure.

49. The Government further submitted that in any event it had been open to the applicant to have recourse to Article 552 § 4 of the Code of Criminal Procedure and to claim compensation in respect of his detention.

50. The applicant disagreed. He submitted that the constitutional complaint could not be regarded as an effective remedy against protracted detention on remand. A decision of the Constitutional Court in the complainant's favour could only result in the offending provision being abrogated. Such a decision would only indirectly affect the applicant's situation in so far as he complained about the excessive length of his detention.

51. The Court first recalls that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among many other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV; *Kowrygo v. Poland*, no. 6200/07, § 57, 26 February 2013).

52. The Court first notes the Government's admission that the applicant had recourse to all remedies concerning the imposition and extension of detention on remand available under the provisions of the Polish Code of Criminal Procedure.

53. The Court considers that in the circumstances of the present case the alleged breach of the applicant's right to a trial within a reasonable time cannot be said to have originated directly from the content of Article 263 of the Code of Criminal Procedure. Rather, it resulted from the manner in which this and other provisions of the Code were interpreted and applied by the courts in the applicant's case. The applicant complained that his detention had lasted too long, not that this provision did not provide for limits for detention on remand, as the Government appear to argue (see paragraph 48 above). However, the established jurisprudence of the

Constitutional Court indicated that constitutional complaints based solely on the allegedly wrongful interpretation of a legal provision were excluded from its jurisdiction (see, among many other authorities, *Palusiński v. Poland* (dec.), no. 62414/00, ECHR 2006-...; *Długołęcki v. Poland*, no. 23806/03, § 25, 24 February 2009).

54. It further notes that in any event the arguments raised by the Government in the present case are similar to those already examined and rejected in previous cases against Poland (see, among other authorities, *Bruczyński v. Poland*, no. 19206/03, §§ 38-45, 4 November 2008, and *Biśta v. Poland*, no. 22807/07, §§ 26-30, 12 January 2010). The Government have not submitted any new evidence which would lead the Court to depart from that finding.

55. In so far as the Government refer to the compensatory remedies in respect of the alleged excessive length of detention, the Court reiterates that under the established case-law, having exhausted one available remedy, namely appeals against decisions further extending his detention, the applicant was not required to embark on another attempt to obtain redress by bringing actions of compensatory character before the courts (see *Kacprzyk v. Poland* no. 50020/06, § 30, 21 July 2009; *Biśta v. Poland*, no. 22807/07, § 29, 12 January 2010; *Kaniewski v. Poland*, no. 38049/02, § 51, 8 November 2005; and *Wegera v. Poland*, no. 141/07, § 49, 19 January 2010). Furthermore, even assuming that an action for damages could be an effective remedy in the context of a complaint about the allegedly excessive length of detention, it is first noted that this can be said to be the case only when that detention has come to an end and when the availability and practicability of such a remedy under the domestic system must be convincingly established, either by reference to a specific provisions of domestic law or to established and consistent practice of national courts (see *Demir v. Turkey* (dec.), no. 51770/07, 16 October 2012, §§ 22–24).

56. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant exhausted domestic remedies in respect of the excessive length of the proceedings and the Government's plea of inadmissibility on the grounds of non-exhaustion of domestic remedies must be dismissed.

2. Six-months

57. The Court further observes that the applicant's detention consisted of two non-consecutive periods. He was first detained from 1 July until 14 August 2002 when he was released (see paragraphs 6-7 above). Any complaint in respect of this period of detention should have been brought within six months of his release (see *Idalov v. Russia* [GC], no. 5826/03, § 134, 22 May 2012; see also *Popenda v. Poland*, no. 39502/08, §§ 51-52, 9 October 2012). His application was lodged with the Court on 5 November

2008, more than six months after his release. It is not open to the Court to set aside the application of the six-month rule even in the absence of the relevant objection from the Government (see, among many other authorities, *Belaousof and Others v. Greece*, no. 66296/01, judgment of 27 May 2004, § 38; *Miroshnik v. Ukraine*, no. 75804/01, § 55, 27 November 2008; *Tsikakis v. Germany*, no. 1521/06, § 55, 10 February 2011; *Ciornei v. Romania*, no. 6098/05, § 19, 21 July 2009).

58. Having regard to the above, the Court finds that the applicant's complaint in respect of the first period of his detention has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

59. It further considers that the complaint in respect of his second period of his pre-trial detention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

60. The applicant was arrested on 5 February 2006. He remained in detention until 13 February 2007, when the Poznań Regional Military Court convicted him of certain offences and imposed a prison sentence on him. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a). Consequently, that period of his detention falls outside the scope of Article 5 § 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 104 et seq., ECHR 2000-XI).

61. On 31 May 2007 the Supreme Court quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 21 May 2008, when the applicant was released. Accordingly, the period to be taken into consideration amounts to one year, 11 months and 28 days.

2. The parties' submissions

(a) The applicant

62. The applicant submitted that his pre-trial detention had exceeded a reasonable time.

(b) The Government

63. The Government were of the view that the grounds for the applicant's detention had been relevant and sufficient and that the authorities had shown the requisite diligence in the examination of his case.

3. The Court's assessment

(a) General principles

64. 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 judgements (see, among many other authorities, *Kudła*, cited above, § 110 et seq., and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

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

65. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, principally relied on three grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he might be liable and (3) the need to ensure the proper conduct of the proceedings, given the risk that the applicant might attempt to induce witnesses to give false testimony.

66. The applicant was charged with a number of offences including multiple counts of fraud, embezzlement, uttering threats and accepting bribes (see paragraph 12 above). In the Court's view, the fact that the case concerned a leading member of a criminal group should also be taken into account in assessing compliance with Article 5 § 3 (see, among many other authorities, *Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007).

67. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could have initially warranted his detention.

68. The judicial authorities also relied on the likelihood that a severe sentence might be imposed on the applicant given the serious nature of the offences he was charged with and the strong evidence against him. However, in regard to this, the Court reiterates that while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot in itself justify long periods of detention (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80–81, 26 July 2001 and *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006). The judicial authorities subsequently relied also on the fact that the case involved a great number of alleged accomplices in the offences (see paragraph 12 above) and that there was a risk, which was considered to be of the utmost importance, that the applicant would attempt to induce witnesses to give false testimony or to otherwise to obstruct the proceedings. In these circumstances, the Court accepts that these grounds were relevant and sufficient to justify the applicant's initial detention.

69. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant"

and "sufficient" to justify holding him in custody for the entire period concerned, namely one year, eleven months and twenty-eight days.

70. The Court takes note of the fact that at some point, namely on 8 January 2008, the authorities held that the applicant should be released on bail pending trial. However, he was apparently, through no fault of the authorities, unable to comply with its terms.

71. It remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings.

72. The Court does not discern any significant periods of inactivity in the investigation or the initial phase of the trial, given that the applicant was arrested on 5 February 2006 and the bill of indictment against him was lodged with the court only five months later, on 20 July 2006. The first-instance judgment was given on 13 February 2007. While it is true that this judgment was later quashed by the higher court on 21 May 2007 and there was a period of inactivity between that date and 10 September 2007, it was not until 10 September 2007 that the cases against the applicant were joined, that intervening period of a little over three months must be seen as having been required by the joinder of the cases and the consequent necessity to re-organise the conduct of the proceedings. That period should also be seen in the context of the entire length of the applicant's detention which the Court does not consider to have been overly long. Subsequently to that, the hearings in the case were held at regular intervals (see paragraph 18 above).

73. For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with due diligence.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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."

76. The applicant claimed 15,000 Polish zlotys (PLN), equivalent to 3,750 euros (EUR) in respect of non-pecuniary damage.

77. The Government contested this claim.

78. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case, the Court awards the applicant the amount claimed in full.

A. Costs and expenses

79. The applicant, referring to the documents he had submitted, also claimed PLN 4,488, equivalent to EUR 1,035 for costs and expenses incurred before the Court.

80. The Government contested this claim.

81. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum claimed in full.

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 5 § 3 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, the following amounts:
      (i) EUR 3,750 (three thousand seven hundred and fifty 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 at the date of settlement;
      (ii) EUR 1,035 (one thousand and thirty-five euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Ineta Ziemele President