CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF BRUCZYŃSKI v. POLAND

(Application no. 19206/03)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Bruczyński v. Poland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 19206/03) 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 Maciej Bruczyński ("the applicant"), on 10 June 2003.

2. The applicant, who had been granted legal aid, was represented by Ms A. Rybak-Starczak, a lawyer practising in Poznań. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 16 November 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings against the applicant

4. The applicant was born in 1974 and lives in Kórnik.

5. On 20 June 2000 the applicant was arrested on suspicion of several offences of mugging and extortion committed as part of an organised criminal group.

6. On 22 June 2000 the Choszczno District Court remanded him in custody, relying on the reasonable suspicion that he had committed the offences in question. It also considered that keeping the applicant in detention was necessary to ensure the proper conduct of the proceedings, given the risk that he might tamper with evidence or induce witnesses to give false testimony, particularly in view of the fact that another suspect had not yet been arrested. The court also stressed the severity of the likely sentence and the serious nature of the charges.

7. Several other members of the same criminal group were subsequently detained and charged in connection with the investigation against the applicant.

8. The applicant's appeal against the detention order, like his further appeals against the decisions extending his detention and all his subsequent, numerous applications for release and appeals against refusals to release him, was unsuccessful. In his applications and appeals he relied, *inter alia*, on his personal circumstances, in particular the need to secure care for his elderly parents. He also argued that his confessions to offences of which he was suspected had not been taken into consideration.

9. Between 20 July 2000 and 5 August 2000 the applicant served a prison sentence which had been imposed on him in other criminal proceedings.

10. In the course of the investigation, the applicant's detention was extended on several occasions, namely on 19 September 2000 (to 20 December 2000), 19 December 2000 (to 20 March 2001), 16 March 2001 (to 20 June 2001), 19 June 2001 (to 31 December 2001), 28 December 2001 (to 31 May 2002) and 29 May 2002 (to 18 July 2002). In all their detention decisions the authorities relied on a strong suspicion, supported by evidence from witnesses and his own testimony, that the applicant had committed the offences in question. They attached importance to the grave nature of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant. They further considered that the need to ensure the proper conduct of the investigation, especially the need to obtain fresh evidence from experts and witnesses, justified holding him in custody.

11. On 28 June 2002 the Gdańsk Regional Prosecutor lodged a bill of indictment with the Gdańsk Regional Court. The applicant was charged with robbery, deprivation of liberty, burglary and possession of firearms and ammunition without a licence. There were 39 defendants in the case, all charged with numerous offences committed in an organised criminal group.

12. On 4 April 2003 the trial court held the first hearing. It subsequently held several hearings in the case.

13. During the court proceedings the Poznań Court of Appeal further extended the applicant's detention pending trial on several occasions, namely on 11 July 2002 (to 18 January 2003), 16 January 2003 (to 18 April 2003), 10 April 2003 (to 18 October 2003) and 25 September 2003 (to 18 April 2004). The court, extending the applicant's detention beyond the

two-year period laid down in Article 263 § 3 of the Code of Criminal Procedure, reiterated the grounds previously given for the applicant's detention. Relying on Article 263 § 4 of the Code of Criminal Procedure it also underlined the complexity of the case owing to the number of defendants and volume of evidence to be obtained from many sources, coupled with the fact that in the course of the investigation new suspects had been identified.

14. On 20 January 2004 the applicant was released from pre-trial detention.

15. On 13 August 2004 the Gorzów Wielkopolski Regional Court gave judgment. The applicant was convicted as charged and sentenced to five years' imprisonment.

16. The applicant appealed.

17. On 16 November 2005 the Poznań Court of Appeal upheld the first-instance judgment.

18. The applicant lodged a cassation appeal (*kasacja*) with the Supreme Court. The proceedings are still pending.

B. Proceedings before the Constitutional Court

19. On 21 July 2003 the applicant lodged a constitutional complaint with the Constitutional Court contesting all the prerequisites of Article 263 § 4 of the Code of Criminal Procedure on the strength of which the Poznań Court of Appeal had given a decision extending his pre-trial detention beyond the two-year period. He claimed that the provision contravened the right to liberty guaranteed by the Polish Constitution.

20. On 24 July 2006 the Constitutional Court, considering the joint constitutional complaint of two complainants including the applicant, gave a judgment (no. SK 58/03). It found one aspect of Article 263 § 4 of the Code of Criminal Procedure unconstitutional in so far as it allowed the Courts of Appeal to extend pre-trial detention beyond the period of two years "if deemed necessary in connection with other important obstacles (in the pre-trial proceedings) which could not be overcome." The Constitutional Court reasoned that "the overruled provisions restricted the enjoyment of constitutional rights and freedoms in such an imprecise and arbitrary manner that they violated the core of constitutionally guaranteed freedoms". Referring to other grounds of extraordinary extensions of pre-trial detention under Article 263 § 4, namely suspension of criminal proceedings, prolonged psychiatric observation of the accused, prolonged preparation of an expert opinion, evidence gathering in a particularly complex case or a foreign country, and intentional protraction of proceedings by the accused, the Constitutional Court stated that although these criteria were to some extent vague as well, their constitutionality could be secured through their precise definition which was formulated through practice and had to make

reference *inter alia* to the well-established case-law of the European Court as regards violations of Article 5 § 3 of the Convention. By virtue of the Constitutional Court's decision, Article 263 § 4 of the Code of Criminal Procedure to the extent it had been found to be unconstitutional would cease to have effect six months after publication of the said judgment in the Polish Journal of Law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions governing detention pending trial

21. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are stated 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.

B. Provisions on State liability for unlawful detention

22. Chapter 58 of the Code of Criminal Procedure, entitled "Compensation for unjustified conviction, detention on remand or arrest", stipulates that the State is liable for wrongful convictions or for unjustifiably depriving an individual of his liberty in the course of criminal proceedings against him.

23. Article 552 provides, in so far as relevant:

> "1. An accused who, as a result of the reopening of the criminal proceedings against him or of lodging a cassation appeal, has been acquitted or resentenced under a more lenient substantive provision, shall be entitled to compensation from the State Treasury for the pecuniary and non-pecuniary damage which he has suffered in consequence of having served the whole or a part of the sentence imposed on him.
>
> ...
>
> 4. Entitlement to compensation for pecuniary and non-pecuniary damage shall also arise in the event of manifestly unjustified arrest or detention on remand."

24. Pursuant to Article 555, an application for compensation for manifestly unjustified detention on remand has to be lodged within one year from the date on which the decision terminating the criminal proceedings in question becomes final.

25. Proceedings relating to an application under Article 552 are subsequent to and independent of the original criminal proceedings in which the detention has been ordered. The claimant can retrospectively seek a ruling as to whether his detention has been justified. He cannot, however, test the lawfulness of his continuing detention on remand and obtain release.

C. Relevant Civil Code provisions

26. On 1 September 2004 the Law of 17 June 2004 on amendments to the Civil Code and other statutes (*Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw*) ("the 2004 Amendment") entered into force. While the relevant amendments have in essence been aimed at enlarging the scope of the State Treasury's liability for tort under Article 417 of the Civil Code – which included adding a new Article 417 and the institution of the State's tortious liability for its omission to enact legislation (the so-called "legislative omission"; "*zaniedbanie legislacyjne*") – they are also to be seen in the context of the operation of a new statute introducing remedies for the unreasonable length of judicial proceedings.

27. Following the 2004 Amendment, Article 417, in so far as relevant, reads as follows:

> "3. If damage has been caused by failure to give a ruling [*orzeczenie*] or decision [*decyzja*] where there is a statutory duty to do so, reparation for [the damage] may be sought after it has been established in the relevant proceedings that the failure to give a ruling or decision was contrary to the law, unless other specific provisions provide otherwise."

THE LAW

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

28. The applicant complained under Article 5 § 1 of the Convention that his detention had not been "lawful", as required under that provision, in particular in view of the fact that the provisions on the basis of which it had been extended beyond the statutory two-year period had been found unconstitutional. Article 5 § 1, in its relevant part, reads:

> " 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:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;... "

29. The Court reiterates that the reasonableness of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *Fox, Campbell and*

Hartley v. the United Kingdom, judgment of 30 August 1990, Series A no. 182, § 32). However, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27 § 55).

30. In the light of the documents in the file, there is no indication that there was a lack of reasonable suspicion against the applicant providing grounds for his detention or that the authorities did not have evidence at their disposal to justify the detention measure.

31. As to the applicant's argument that, based on unconstitutional provisions, his pre-trial detention had been unlawfully extended beyond the statutory two-year period, the Court observes that although the Constitutional Court found Article 263 § 4 partly unconstitutional, the decisions extending the applicant's detention did not mention the grounds found to be unconstitutional. In fact, they evoked in particular the complexity of the case owing to the number of defendants and volume of evidence to be obtained from many sources (see paragraph 12 above) namely the grounds that the Constitutional Court found constitutional. It is further to be observed that at all stages of the detention proceedings the reasonable suspicion that the applicant had committed the offences (Article 5 § 1 (c)) persisted.

32. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

33. The applicant further complained under Article 5 § 2 of the Convention that on the day he was arrested he was not informed about the charges against him.

34. However, the Court finds that the applicant did not complain about wrongful arrest to the national authorities, and therefore has not, as required by Article 35 § 1 of the Convention, exhausted the remedies available under Polish law.

35. It follows that this complaint is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

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

36. The applicant complained that the length of his pre-trial detention had been excessive, particularly in view of the fact that it had been extended beyond the statutory two-year period. 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. "

37. The Government contested that argument.

A. Admissibility

38. The Government submitted in the first place that the applicant had not exhausted the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention.

39. They argued that if the applicant had considered that the provisions on which the domestic decisions regarding his pre-trial detention had been based were incompatible with the Constitution, it would have been open to him to challenge these provisions by lodging a constitutional complaint under Article 79 of the Constitution. However, the applicant chose to lodge his application with the Court before giving the domestic courts an opportunity to rule on the Article 5 § 3 complaint. The applicant could have obtained, from the Constitutional Court, the result he sought to achieve before this Court, namely an assessment of whether the contested regulations as applied to his case had infringed his right to liberty.

40. The applicant disagreed. He submitted that the Government's non-exhaustion plea should be dismissed as inconsistent with Article 35 § 1 of the Convention and the Court's case-law.

41. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 71).

42. The Court has already dealt with the question of the effectiveness of the Polish constitutional complaint (*Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003, and *Wypych v. Poland* (dec.), no. 2428/05, 25 October 2005). It examined its characteristics and in particular found that the constitutional complaint was an effective remedy for the purposes of Article 35 § 1 of the Convention in situations where the alleged violation of the Convention resulted from the direct application of a legal provision considered by the complainant to be unconstitutional.

43. In the instant case, the Court notes that the applicant in his constitutional complaint contested all the prerequisites of Article 263 § 4 thus including the aspect of an excessive length of his detention (see paragraph 19 above).

44. The Court also observes that the applicant lodged a constitutional complaint on 21 July 2003, that is eleven days after bringing the application before the Court. The Constitutional Court gave its judgment on 24 July 2006. In this connection the Court observes that while an applicant is, as a rule, in duty bound to exercise the different domestic remedies before he

applies to the Court, it must be left open to the latter to accept the fact that the last stage of such remedies may be reached shortly after the lodging of the application but before the Court is called upon to pronounce itself on admissibility (see *Ringeisen v. Austria,* judgment of 16 July 1971, series A no. 13, p. 38, § 91). Thus, in this respect the Government's objection must be dismissed.

45. Having regard to the above, the Court dismisses the Government's objection concerning domestic remedies. Furthermore, it notes that this part of the application 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

46. The applicant's detention started on 20 June 2000, when he was arrested on suspicion of several offences of mugging and extortion committed while acing as a member of an organised criminal group. It continued until 20 January 2004 when the applicant was released.

47. However, between 20 July 2000 and 5 August 2000 the applicant served a prison sentence which had been imposed on him in other criminal proceedings. This term, being covered by Article 5 § 1 (a), must therefore be discounted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3.

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

2. The parties' submissions

(a) The applicant

48. The applicant argued that the length of his detention had been unreasonable. In his opinion, the courts had not given sufficient and relevant reasons for the exceptional extension of his detention beyond the two-year time-limit.

(b) The Government

49. The Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences at issue and the severity of the likely penalty. They pointed out that the length of the applicant's detention should be assessed with reference to the fact that he and his co-defendants had acted as an organised criminal gang. The risk that the defendants might obstruct the proceedings or tamper with evidence had been aggravated by the fact that not all the members of the group had yet been apprehended. Thus, the

domestic courts had considered it necessary to detain the applicant and his co-defendants until all relevant witnesses had been examined.

50. 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, had required the authorities to take all necessary measures to ensure 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.

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

3. The Court's assessment

(a) General principles

52. The Court points out 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, have been 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

53. 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 complexity of the case owing to the number of defendants and volume of evidence to be examined, (3) the severity of the penalty to which he was liable, and (4) the need to ensure the proper conduct of the proceedings. As regards the latter, they relied on the fact that the applicant might interfere with witnesses and other co-accused given the fact that he was a member of an organised criminal gang.

54. The applicant was charged with numerous offences of mugging and extortion committed as a part of an organised criminal group (see paragraph 10 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 *Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007).

55. The Court accepts that the suspicion of the applicant's having committed the offences and the need to ensure the proper conduct of the proceedings might initially have justified 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. However, with the passage of time, these grounds became less relevant. Moreover, the authorities relied heavily on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue. In this connection, the Court agrees 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 detention on remand (see *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

56. In addition, 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 arising 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 extensions 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 one concerning organised crime groups, 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 in the nature of things often particularly high. Indeed, in this context the Court notes that some members of the organised criminal gang have not yet been apprehended.

57. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited powers to extend this measure. Even if the particular circumstances of the case required detention to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (see *Wolf v. Poland*, no. 15667/03 and 2929/04, § 90, 16 January 2007). In this connection, the Court observes that the applicant was held in custody for three years and nine months.

58. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal gang, the Court concludes that the grounds given by the domestic authorities do not justify the overall period of the applicant's detention.

59. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 5 THE CONVENTION

60. The applicant further complained that he had been denied a right to compensation under Article 5 § 5 of the Convention, which reads as follows:

> " Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation. "

61. The Government accepted that the applicant did not have at his disposal an effective remedy when seeking compensation for his pre-trial detention. The availability of such domestic remedy should not, however, in the Government's opinion, arise under Article 5 § 5 of the Convention in the present case as the applicant's detention was always based on a judicial decision and ordered in accordance with the procedure prescribed under domestic law.

62. The applicant submitted that the requirements for a lawful arrest and detention in domestic law fell short of the requirements imposed by Article 5 of the Convention and, therefore, pursuant to domestic law, he did not have an enforceable right to compensation for the matters of which he complained.

63. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Fedotov v. Russia*, no. 5140/02, § 83, 25 October 2005, and *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

64. In the present case, as the Court has found that the complaints under Article 5 §§ 1 and 2 are inadmissible (concerning the existence of reasonable grounds of suspicion to justify the applicant's arrest and failure to inform him promptly of the reasons for the arrest), no issue arises under Article 5 § 5 in relation to these grievances.

65. However, the Court has found above that there has been a breach of Article 5 § 3 of the Convention concerning the unreasonable length of the applicant's pre-trial detention. As to the Government's argument that the availability of a Article 5 § 5 remedy was gratuitous in the applicant's case as his detention was ordered in accordance with the domestic law the Court reiterates that the arrest and detention may be lawful under domestic law, but still in breach of Article 5 § 3, in which case paragraph 5 of Article 5 is applicable (see, *mutatis mutandis*, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, p. 35, § 67).

66. The Court must therefore establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5 § 3.

67. The Court recalls that in its *Ryckie v. Poland* judgment (no. 19583/07, 30 January 2007, § 54)) it observed that there were two possibilities available to Mr Ryckie under Polish law to claim compensation in relation to his detention on remand. He could have instituted proceedings for compensation for unjustified detention (Article 552 § 4 of the Code of Criminal Procedure) or he could have claimed compensation from the State Treasury for damage caused by the unlawful action of a State official carried out in the course of performing his duties (Article 417 of the Civil Code: see paragraphs 26 and 27 above).

68. In the instant case the Court can accept the Government's acknowledgment that the applicant did not have a compensatory remedy at his disposal. In the first place, it is not open to the applicant to avail himself of Article 552 § 4 of the Code of Criminal Procedure since reliance on that provision pre-supposes that the criminal proceedings giving rise to remand have been terminated (see paragraph 24 above). The applicant's case is still pending before the Supreme Court. Secondly, the new Article 417 sec. 3 of the Civil Code cannot be invoked by the applicant since the remedy cannot be used in respect of unlawful actions that have occurred before 1 September 2004. The applicant's detention started on 20 June 2000 and continued until 20 January 2004.

69. Thus, the Court finds that the applicant had no enforceable right to compensation for his detention which has been found to be in violation of Article 5 § 3 of the Convention.

70. There has been therefore a breach of Article 5 § 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

71. The applicant complained in general terms that the proceedings against him had been unfair.

72. The Court finds that the applicant lodged a cassation appeal with the Supreme Court against the final judgment of the Poznań Court of Appeal of 16 November 2005. The relevant proceedings are still pending.

73. It follows that this complaint is premature and must be rejected under Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

VI. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

74. The applicant further complained under Article 6 § 1 of the Convention that the length of the criminal proceedings had exceeded a "reasonable time" within the meaning of this provision.

75. However, pursuant to Article 35 § 1 of the Convention:

> " The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law... "

76. The Court observes that the applicant failed to avail himself of the remedies provided for by 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 rozPoznańia sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) The Court has held that these remedies are effective in respect of the excessive length of pending judicial proceedings (see *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005, and *Charzyński v. Poland* (dec.), no. 15212/03, 1 March 2005).

77. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

78. Lastly, the applicant complained under Article 8 of the Convention that his extended detention had put a severe strain on him and his family. Furthermore, he submitted that he had not been allowed to make telephone calls to his relatives.

79. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, help him to maintain contact with his close family (see, *mutatis mutandis*, *Messina v. Italy (no. 2)*, no. 25498/94, § 61, 28 September 2000).

80. In the present case the applicant has not reported any limitations on the number of family visits, supervision over those visits or subjection to a special prison regime or special visiting arrangements. Furthermore, he failed to produce any evidence to substantiate the alleged censorship of his correspondence or restriction on communication with his family by telephone.

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

84. The Government contested the amount as exorbitant.

85. The Court considers that the applicant has suffered non-pecuniary damage on account of the unreasonable length of his pre-trial detention which is not sufficiently compensated for 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 1,500 under this head.

B. Costs and expenses

86. The applicant also claimed 6,840 Polish zlotys (PLN) for the costs and expenses incurred before the domestic courts and PLN 10,000 for those incurred before the Court.

87. The Government argued that any award under this head should be limited to those costs and expenses that had been actually and necessarily incurred and were reasonable as to quantum. They noted that in respect of claims for the reimbursement of costs and expenses incurred before the domestic courts, the applicant's lawyer did not produce any invoices.

88. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes the applicant was paid EUR 850 in legal aid by the Council of Europe. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 1,650 for costs and expenses.

C. Default interest

89. 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 concerning the length of the applicant's pre-trial detention and the existence of an enforceable right to compensation for

the excessively long detention 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 5 § 5 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,650 (one thousand six hundred and fifty euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable on those amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President