EDJ 2006/311564

Tribunal Europeo de Derechos Humanos, S 12-12-2006, nº 75107/2001

Resumen

En el caso DOMBEK v. POLONIA, el TEDH estima que la detención preventiva del demandante careció de los requisitos legales del art. 5 de la CEDH.

NORMATIVA ESTUDIADA

Conv. de 4 noviembre 1950. Convenio Europeo para la Protección Derechos Humanos y Libertades Fundamentales art.5.1 , art.5.3 , art.41

CLASIFICACIÓN POR CONCEPTOS JURÍDICOS

AGOTAMIENTO RECURSOS INTERNOS
CONDICIÓN DE VÍCTIMA
DERECHO A LA LIBERTAD Y SEGURIDAD
DETENCIÓN PREVENTIVA
- PASO A DISPOSICIÓN JUDICIAL
- LEGALIDAD DE SU ADOPCIÓN
- RECURSOS SOBRE SU LEGALIDAD
- DURACIÓN
- SUPUESTOS DIVERSOS

INDEMNIZACIÓN POR VIOLACIONES DEL CONVENIO
- EN GENERAL
- DAÑO MORAL

PRIVACIÓN DE LIBERTAD

FICHA TÉCNICA

Procedimiento:Procedimiento ante el TEDH

Legislación

Aplica art.5.1, art.5.3, art.41 de Conv. de 4 noviembre 1950. Convenio Europeo para la Protección Derechos Humanos y Libertades Fundamentales

Sinópsis *Hechos:*

Primer proceso:
El 9 de julio de 1996 el demandante fue arrestado y detenido bajo custodia. El 12 de agosto del mismo año el tribunal puso en libertad al demandante.
El 20 de octubre de 1997 el demandante fue de nuevo arrestado por la policía.
La detención fue prolongada en diferentes ocasiones.
El juicio empezó el 24 de agosto de 1999 y continuó por tres días.
El 27 de septiembre de 2001 el tribunal dictó sentencia sentenciando al demandante a ocho años de prisión.
El proceso está aun pendiente en apelación.
Segundo proceso:
El 11 de septiembre de 1991 el demandante fue arrestado por la policía en conexión con el proceso criminal contra él.
El 12 de julio de 1994 el demandante fue absuelto.
Posteriormente esta sentencia fue anulada y el caso fue remitido a nuevo estudio.
El 30 de enero de 2001 el tribunal de apelación decidió detener al demandante bajo custodia en vista de la sospecha razonable de que había cometido el delito del que se le acusaba.
El 28 de abril de 2005 el tribunal dictó sentencia y el demandante fue sentenciado a 25 años de prisión.
Valoración de la violación del art. 5,1 de la CEDH:
El demandante alegó que su detención durante el periodo del 17 de septiembre al 1 de octubre de 1999 careció de base legal.
El TEDH ya ha examinado esta cuestión en otros casos y falló que la práctica de mantener a una persona detenida era inconsistente con la legalidad del art. 5 de la CEDH.
El TEDH no ve razonas para distinguir el presente caso de lo anterior por lo que estima que ha habido violación del art. 5,1 de la CEDH.
Valoración de la violación del art. 5,3 de la CEDH:
El demandante alegó que la duración de su detención bajo custodia había sido excesiva.
El TEDH acepta que la sospecha contra el demandante de haber cometido el delito podía inicialmente haber justificado su detención. Sin embargo con el paso del tiempo, la gravedad de la pena anticipada, no puede ser aceptada como justificante suficiente para mantener al demandante detenido por más de tres años.

Así considera que ha habido violación del art. 5,3 de la CEDH.
Aplicación del art. 41 de la CEDH:
El TEDH otorga 2,000 euros al demandante por daños morales.

VERSION OFICIAL EN INGLÉS

SENTENCIA

CASE OF DOMBEK v. POLAND

(Application no. 75107/01)

JUDGMENT

STRASBOURG

12 December 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dombek v. Poland,

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

Sir Nicolas Bratza, President,

Mr J. Casadevall

Mr G. Bonello,

Mr K. Traja,

Mr S. Pavlovschi,

Mr L. Garlicki,

Mrs L. Mijovi#, judges,

and Mr T.L. Early, Section Registrar,

Having deliberated in private on 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 75107/01) 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 Jacek Dombek ("the applicant"), on 10 October 1999.

2. The Polish Government were represented by their Agent, Mr J. Wo##siewicz of the Ministry of Foreign Affairs.

3. On 25 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning alleged unlawfulness and length of the applicant's detention on remand to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in Gda#sk.

1. First set of criminal proceedings ("the Bydgoszcz case")

5. On 9 July 1996 the applicant was arrested and detained on remand. On 12 August 1996 the K#dzierzynKo#le District Court (S#d Rejonowy) released the applicant.

6. On 20 October 1997 the applicant was again arrested by the police in connection with the same criminal investigation. On 21 October 1997 the Cz#stochowa District Court decided to detain him on remand in view of the reasonable suspicion that he had committed several offences acting in an organised group of criminals.

7. The applicant's appeal against this decision was dismissed by the Cz#stochowa Regional Court (S#d Wojewódzki) on 6 November 1997. The appeal lodged by his lawyer was dismissed on 20 November 1997.

8. On 8 December 1997 the Cz#stochowa Regional Court prolonged the applicant's pretrial detention reiterating the grounds originally given for his detention and adding that the measure was necessary to secure the proper conduct of the investigation.

9. On 4 March 1998 the Katowice Court of Appeal (S#d Apelacyjny) further prolonged his detention on remand. That decision was upheld by the Supreme Court (S#d Najwy#szy) on 24 April 1998.

10. Subsequently, the applicant's detention was prolonged by the Katowice Court of Appeal on 8 July 1998. The court considered that the severity of the anticipated penalty and the risk of collusion justified keeping him in detention.

11. On 11 September 1998 the Supreme Court allowed an application made by the Prosecutor General under Article 263 of the 1997 Code of Criminal Procedure ("1997 Code") and further prolonged the applicant's detention on remand. The Supreme Court considered that the reasonable suspicion of his having committed the offences in question and the risk of collusion justified keeping the applicant in

detention to secure the proper conduct of the proceedings. The court also considered that the investigation could not be terminated earlier due to circumstances for which the authorities could not be held responsible, such as the complexity of the case and the seriousness of the offences.

12. On 31 December 1998 the applicant and 14 coaccused were indicted before the Bydgoszcz Regional Court (S#d Okr#gowy).

13. On 11 January 1999 the Cz#stochowa Regional Court prolonged the applicant's detention until 30 June 1999 reiterating the grounds previously given for the applicant's detention.

14. On 23 June 1999 the Bygodszcz Regional Court decided to prolong until 30 September 1999 the applicant's detention on remand. It considered, for the same reasons as previously given, that keeping the applicant in detention was the only means to secure the proper conduct of the proceedings. The applicant appealed.

15. The applicant's trial started on 24 August 1999 and continued for three days. It appears that the hearing was subsequently adjourned.

16. On 27 August 1999 the Bygdoszcz Regional Court examined the applicant's appeal against its decision of 23 June 1999 and partly allowed it. The court considered that the pretrial detention of the applicant should be prolonged only until 17 September 1999. It established that in assessing the length of the applicant's detention with respect to the present case, and for the purpose of the timelimits provided for by Article 263 of the 1997 Code, the period between 9 July and 12 August 1996 should have been added. Accordingly, the Regional Court applied to the Supreme Court asking for the applicant's detention to be prolonged beyond the term of two years provided for in Article 263 § 3 of the 1997 Code.

17. On 16 September 1999 the Bydgoszcz Detention Centre asked the Supreme Court whether any decision had been given in the applicant's case. On the same date the President of Chamber III of the Supreme Court informed the Detention Centre by fax that a session on prolongation of the applicant's detention had been scheduled for 1 October 1999. The President further noted that on the basis of the transitional provisions in the 1997 Code, the applicant's detention should be ipso jure prolonged until the date of the Supreme Court's session.

18. On 22 September 1999 the applicant's lawyer submitted pleadings to the Supreme Court in which he argued that the applicant had been illegally detained as the detention order given on 27 August 1999 had expired on 17 September 1999 and therefore he should have been released. In particular, he maintained that the transitional provisions were not applicable in the applicant's case and that the 1997 Code did not contain a provision which would allow detention on the basis of a fax sent by the Supreme Court.

19. On 1 October 1999 the Supreme Court held its session and prolonged the applicant's detention until 27 February 2000 relying on the strong suspicion against the applicant, the complexity of the case and the need to continue the process of gathering the evidence.

20. On 10 February and 24 May 2000 the Supreme Court further prolonged the applicant's detention reiterating the grounds previously given. In the first of those decisions the Supreme Court added:

"...There is no evidence that could prove (the applicant's) assertion that his wife and children ‘would soon have nothing to eat'.

Moreover, it should be noted that there is a particular reason why the pretrial detention of (the applicant) should not be lifted. From the information obtained by the Presiding Judge it appears that (the applicant) might obstruct the proceedings."

21. Subsequently, the Bydgoszcz Regional Court made several applications to the Court of Appeal asking that the applicant's detention be prolonged as, following an amendment to the 1997 Code, the Supreme Court was no longer competent to prolong the detention beyond the statutory timelimit of 2 years, as laid down in Article 263 § 3 of the Code.

22. On 27 September 2000 the Gdansk Court of Appeal granted the application and prolonged the applicant's detention on remand until 30 December 2000. The court relied in particular on the complexity of the case and the conduct of the accused who had contributed to the prolongation of the proceedings. The court found as follows:

"Of course, the applicant's detention for over three years in this case requires particular attention to be given to the process of gathering evidence, above all, to examine without further delay the defence motions concerning evidence. However, in the light of the proceedings as a whole, the conduct of the Regional Courts should be assessed positively".

23. On 21 December 2000 as well as on 25 April and 20 June 2001 the Gda#sk Court of Appeal prolonged the applicant's detention. In addition to the strong probability that he had committed the offences, the court found that the proceedings had been conducted diligently and concluded that only the applicant's detention would guarantee the proper conduct of the final stage of the proceedings.

24. Between 15 February and 15 October 2001 the applicant served a prison sentence ordered by the Inowroc#aw District Court in another set of criminal proceedings brought against him.

25. During his pretrial detention the applicant lodged several hundred applications for release. However, these applications and his appeals against the decisions to prolong his detention on remand were to no avail.

26. On 27 September 2001 the Bydgoszcz Regional Court gave judgment. The trial court convicted the applicant and sentenced him to eight years' imprisonment. The applicant and the prosecutor appealed.

27. Subsequently, the applicant's detention with respect to this set of criminal proceedings was not prolonged. However, the applicant had not been released as he remained in pretrial detention ordered in the second set of criminal proceedings (see below).

28. On 17 June 2003 the Gdansk Court of Appeal allowed the appeals and quashed the impugned judgment. The case was remitted to the Bydgoszcz Regional Court which, on 14 January 2004, stayed the proceedings because the other set of criminal proceedings before the Zielona Góra Regional Court were pending and the applicant could not be transported to the Bygdoszcz Detention Centre.

29. On 25 May 2005 the Bydgoszcz Regional Court resumed the proceedings. The proceedings are pending before that court.

2. Second set of criminal proceedings ("the Zielona Góra case")

30. On 11 September 1991 the applicant was arrested by the police in connection with criminal proceedings pending against him. On the same date the Zielona Góra Regional Prosecutor decided to detain him on remand.

31. On 12 July 1994 the Zielona Góra Regional Court acquitted the applicant.

32. On 14 December 1994 the applicant was released from detention.

33. On 24 January 1996 the Pozna# Court of Appeal quashed the impugned judgment and remitted the case to the Regional Prosecutor.

34. Between December 1997 and November 1999 the prosecutor stayed the proceedings.

35. On 30 January 2001 the Pozna# Court of Appeal decided to detain the applicant on remand in view of the reasonable suspicion that he had committed, with an accomplice, a robbery and three offences of homicide.

36. The applicant appealed, but on 13 January 2001 the Pozna# Court of Appeal dismissed his appeal.

37. On 19 April, 24 July and 25 October 2001 and 24 April, 23 July and 24 October 2002 as well as on 22 January 2003 the Pozna# Court of Appeal further prolonged his detention. The court held that the reasonable suspicion that the applicant had committed the offences with which he had been charged, the severity of the anticipated sentence and the need to secure the proper conduct of the investigation justified keeping the applicant in detention.

38. On 13 March 2003 the applicant was indicted before the Zielona Góra Regional Court.

39. On 26 March 2003 the Pozna# Court of Appeal further prolonged the applicant's detention. Subsequently, the applicant's detention was prolonged on three occasions in 2003, and on 25 March, 24 June, 23 September and 21 December 2004. The court in all those decisions found that the grounds for keeping him in detention were still valid.

40. On 28 April 2005 the trial court gave judgment. The applicant was convicted as charged and sentenced to twentyfive years' imprisonment.

41. The applicant requested that the written reasons for the judgment be prepared by the trial court so as to allow him to lodge an appeal.

II. RELEVANT DOMESTIC LAW

42. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the socalled "preventive measures" (#rodki zapobiegawcze). Article 249 § 5 provides that the lawyer of a detained person should be informed of the date and time of court sessions at which a decision is to be taken concerning prolongation of detention on remand.

A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in Celejewski v. Poland, no. 17584/04, §§ 22 and 23, 4 May 2006.

43. Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences (Kodeks karny wykonawczy) ("the 1997 Code") which entered into force on 1 September 1998. The relevant part of Article 103 § 1 of the Code provides as follows:

"Convicts (...) have a right to lodge complaints with institutions established by international treaties ratified by the Republic of Poland concerning the protection of human rights. Correspondence in those cases (...) shall be sent to the addressee without delay and shall not be censored."

For a more detailed rendition of the relevant domestic law provisions see the Court's judgment in Michta v. Poland, no. 13425/02, § 33, 4 May 2006.

44. According to Article 10 (a) of the Law of 29 June 1995, as amended by the Law of 1 December 1995, different rules applied in respect of persons whose detention on remand started before 4 August 1996. This Article provided:

"1. In cases where the total period of detention on remand which started before 1 August 1996 exceeds the timelimits referred to in Article 222 §§... and 3 of the Code of Criminal Procedure, the accused shall be kept in detention until the Supreme Court gives a decision on a request for prolongation of such detention under Article 222 § 4 of the Code of Criminal Procedure.

2. In cases referred to in § 1, if no (such) request has been lodged, detention shall be quashed not later than 1 January 1997."

Article 2 § 2 of the Law of 6 December 1996, which added certain new grounds for prolonging detention beyond the timelimits, provided:

"In cases where a request for prolongation of detention imposed before 4 August 1996 is lodged on the basis of Article 222 § 4, as amended by Article 1 of this law, the detention shall continue until that request has been examined by the Supreme Court."

THE LAW

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

45. The applicant complained that his detention during the period between 17 September and 1 October 1999 lacked any legal basis. Article 5 of the Convention, in so far as relevant, 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;..."

46. The Government contested that argument.

A. Admissibility

47. The Court notes that this complaint is not manifestly illfounded 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

48. The Government were of the view that the applicant's detention during that period was lawful. They argued that it was based on Article 2 § 2 of the Law of 6 December 1996. The Government observed that the Supreme Court had contacted the remand centre before the expiry of the preceding detention order and informed it that the examination of the lawfulness of the applicant's detention would be held on 1 October 1999.

49. The applicant did not agree.

50. The Court reiterates that a period of detention will in principle only be lawful if it is carried out pursuant to a court order (see Benham v. the United Kingdom, judgment of 10 June 1996, Reports 1996III, p. 753, § 42, and Je#ius v. Lithuania, no. 34578/97, § 68, ECHR 2000IX). In addition, the habeas corpus guarantee contained in Article 5 § 4 of the Convention supports the view that detention which is prolonged beyond the initial period foreseen in paragraph 3 necessitates "judicial intervention" as a safeguard against arbitrariness (see Baranowski v. Poland, no. 28358/95, § 69, ECHR 2000III).

51. The Court observes that by the decision of 27 August 1999 the applicant's detention was prolonged only until 17 September 1999. Thus, his detention after 17 September until 1 October 1999, when the Supreme Court further prolonged it, was not based on any judicial decision. It is clear that the fax from the registry of the Supreme Court, sent to the detention centre on 16 September 1999, in which the registry informed the prison authorities that the request for the prolongation of the applicant's detention would be examined on 1 October 1999, cannot be regarded as a judicial order. Nor can the application for prolongation made by the Regional Court on 27 August 1999 be so qualified.

52. The Court has already examined this matter and found that the practice of keeping a person in detention under transitional provisions in the 1997 Code was inconsistent with the lawfulness requirement of Article 5 § 1 of the Convention (see A.S. v. Poland, no. 39510/98, § 76, 20 June 2006). The Court sees no reason to distinguish the present case from the previous application. It follows that the applicant's detention on remand between 17 September and 1 October 1999 was in breach of Article 5 § 1.

53. There has accordingly been a violation of Article 5 § 1 of the Convention EDL 1979/3822 .

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

54. The applicant complained that the length of his detention on remand had been unreasonable. He relied on Article 5 § 3 of the Convention, which 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."

55. The Government contested that argument.

A. Admissibility

56. The Court notes that this complaint is not manifestly illfounded 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. Arguments before the Court

57. The applicant submitted in general terms that his application lodged with the Court was justified. He argued that keeping him in pretrial detention for such a lengthy period of time had violated his human rights and the Convention.

58. The Government considered that the applicant's pretrial detention satisfied the requirements of Article 5 § 3. They pointed to the fact that as from 2 June 2004 the applicant has been detained in connection with two sets of pending criminal proceedings against him. The Government submitted that his pretrial detention was justified and that during the entire period the authorities had given relevant and sufficient reasons for prolonging it.

59. The Government further submitted that the domestic courts acted diligently and speedily, in particular taking into account the complexity of the case, which involved nine coaccused and altogether 41 offences.

2. The Court's assessment

(a) Principles established under the Court's caselaw

60. Under the Court's caselaw, the issue of whether a period of detention is reasonable cannot be assessed in abstracto. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, W. v. Switzerland, judgment of 26 January 1993, Series A no. 254A, p. 15, § 30, and Kud#a v. Poland [GC], no. 30210/96, § 110, ECHR 2000XI)

61. The presumption is in favour of release. As established in Neumeister v. Austria (judgment of 27 June 1968, Series A no. 8, p. 37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see McKay v. the United Kingdom [GC], no. 543/03, § 41, ECHR 2006...).

62. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pretrial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see McKay, cited above, § 43).

63. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see Labita v. Italy [GC], no. 26772/95, § 153, ECHR 2000IV, and Jab#o#ski v. Poland, no. 33492/96, § 80, 21 December 2000).

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

64. The Court first notes that the applicant complains about his pretrial detention in two sets of criminal proceedings. In the first set the applicant had been detained between 20 October 1997, when he was arrested, and 15 February 2001, when he started serving the prison sentence ordered in another set of criminal proceedings. Subsequently, in particular after the firstinstance judgment had been quashed by the appeal court, his pretrial detention had not been prolonged. The detention thus lasted 3 years, 3 months and 27 days.

As regards the second set of criminal proceedings the applicant was detained on remand on 30 January 2001 and on 28 April 2005 he was convicted by the firstinstance court. However, the period between 15 February and 15 October 2001 must be subtracted from the total period of the applicant's detention, as during this time the applicant had been serving the prison sentence. It should be noted that the applicant did not start to serve the prison sentence ordered in the first set of proceedings by the Bydgoszcz Regional Court on 27 September 2001 as the conviction did not become final and enforceable. His detention thus lasted 3 years and 7 months.

65. The Court observes that in both sets of proceedings the authorities initially relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, and the risk that he might interfere with the conduct of the proceedings. In addition, the authorities relied heavily on the severity of the anticipated sentence, which made it probable that the applicant and other accused would obstruct the course of the criminal proceedings. They repeated those grounds in all their decisions. The domestic courts also considered that in view of the complexity of the case, which concerned an organised criminal group, the applicant's detention was necessary to secure the proper conduct of the proceedings.

In subsequent decisions given in both sets of criminal proceedings against the applicant, the authorities failed to advance any new grounds for prolonging the application of the most serious preventive measure to the applicant.

66. The Court accepts that the suspicion against the applicant of having committed the offences might initially have justified his detention, in particular in the light of the fact that the applicant was subsequently sentenced, by the firstinstance court to twentyfive years' imprisonment.

67. In addition, the judicial authorities appeared to presume the risk of obstruction of the proceedings with regard to the severity of the anticipated penalty, given the serious nature of the offences at issue. In this respect, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending (Górski v. Poland, no. 28904/02, § 57, 4 October 2005). The Court also acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider that such an initial risk was established. 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 Ilijkov v. Bulgaria, no. 33977/96, §§ 8081, 26 July 2001).

68. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal group. In this regard, the Court considers that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (Górski v. Poland, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention. It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. In these circumstances, the Court considers that the need to obtain voluminous evidence from many sources and to determine the facts and degree of the alleged responsibility of each of the codefendants, constituted relevant and sufficient grounds for the applicant's detention during the period necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused. Moreover, the Court considers that in cases such as the present concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other coaccused, or might otherwise obstruct the proceedings, is in the nature of things often particularly high.

69. All the factors considered above could justify a relatively longer period of detention on remand. However, they do not give the authorities unlimited power to prolong this preventive measure. Firstly, with the passage of time, the initial grounds for pretrial detention become less and less relevant and the domestic courts should rely on other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see, among many other authorities, I.A. v. France, judgment of 23 September 1998, Reports of Judgments and Decisions 1998VII, p. 2979, § 102; Labita v. Italy [GC], cited above, § 153). Secondly, even if due to the particular circumstances of

the case, detention on remand is extended beyond the period generally accepted under the Court's caselaw, particularly strong reasons would be required to justify this.

In the circumstances of the present case, the Court finds that with the passage of time, the severity of the anticipated penalty, alone or in conjunction with other grounds relied on by the authorities, cannot be accepted as sufficient justification for holding the applicant in detention for a very long period of over 3 years.

70. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative measures of ensuring his appearance at the trial. Indeed, that Article lays down not only the right to "trial within a reasonable time or release pending trial" but also provides that "release may be conditioned by guarantees to appear for trial" (see Jab#o#ski, cited above, § 83).

In the present case the Court notes that there is no express indication that during the entire period of the applicant's pretrial detention the authorities envisaged any other ways of guaranteeing his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other "preventive measures" expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

71. The Court concludes, even taking into account the particular difficulty in dealing with a case concerning an organised criminal group, that the grounds given by the domestic authorities were not "relevant" and "sufficient" to justify the applicant's being kept in detention for 3 years and 4 months as regards the first set of proceedings and 3 years and 7 months with respect to the second one.

There has therefore been a violation of Article 5 § 3 of the Convention EDL 1979/3822 .

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION EDL 1979/3822

72. 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

73. The applicant claimed 1,340,000 euros (EUR) in respect of nonpecuniary damage.

74. The Government considered the claim excessive.

75. The Court awards the applicant EUR 2,000 in respect of nonpecuniary damage.

B. Costs and expenses

76. The applicant did not make any claim in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the remainder of the application admissible;

2. Holds that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention between 17

3. Holds that there has been a 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, EUR 2,000 (two thousand euros) in respect of nonpecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the settlement;

(b) that from the expiry of the abovementioned 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 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. Early Nicolas Bratza

Registrar President