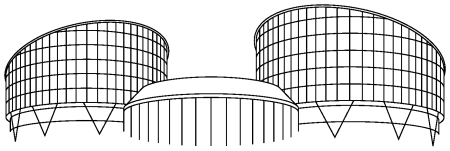

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NAWROT v. POLAND

(Application no. 77850/12)

JUDGMENT

STRASBOURG

19 October 2017

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 Nawrot v. Poland,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 19 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 77850/12) 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 Krzysztof Nawrot ("the applicant"), on 20 November 2012.

2. The applicant was initially represented by Mr J. Zaleski, a lawyer practising in Katowice. After the submission of his observations on the admissibility and merits he withdrew the power of attorney granted to his lawyer. The Polish Government ("the Government") were represented by their Agent, Mrs J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant complained under Article 5 § 1 of the Convention that his detention in a psychiatric hospital had been unlawful. He further alleged a breach of Article 5 § 4 of the Convention, in that he was not afforded an effective possibility of challenging the legality of his deprivation of liberty.

4. On 18 November 2015 the complaints under Article 5 §§ 1 and 4 of the Convention were communicated to the Government, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and is currently serving a sentence of imprisonment in Nysa Prison.

A. First set of criminal proceedings against the applicant (robbery)

6. On 28 May 2001 the Kielce Regional Court convicted the applicant of robbery and sentenced him to ten years' imprisonment. The sentence was amended by the Cracow Court of Appeal on 5 December 2001. The applicant has been serving this sentence since 3 September 2000, with interruptions between 13 January 2003 and 13 January 2005; 31 May 2005 and 17 August 2005; and 13 May 2008 and 30 May 2014.

B. Second set of criminal proceedings against the applicant (murder)

7. In August 2005 the applicant was charged with murdering an Italian citizen, a certain P.A on 9 August 2005. Allegedly, he had repeatedly hit P.A. on the head, causing brain haemorrhages, swelling of the brain, and consequently P.A.'s death. He was also charged with one count of robbery committed on 8 August 2005 and possession of 0.2327gr of MDMA (commonly known as extasy) on 17 August 2005.

8. On 20 March 2006, after examining the applicant and analysing his medical file from 2000, psychiatrists concluded that he should undergo a psychiatric assessment, in order to determine whether he could be held criminally responsible for this offence.

9. On 27 March 2006 the Katowice Regional Court ordered that the applicant should undergo a psychiatric assessment in a psychiatric facility. The applicant underwent this assessment in the psychiatric ward of Cracow Detention Centre between 12 April and 30 June 2006. In an opinion dated 18 July 2006 ("the 2006 opinion"), two psychiatrists and a psychologist confirmed that he had been suffering from a chronic psychotic disorder of a delusional type related to organic lesions in his central nervous system, and also from a personality disorder (*przewlekłe psychotyczne zaburzenia psychiczne o obrazie zespołu urojeniowego u osoby ze zmianami organicznymi o.u.n.; zaburzenia rozwoju osobowości*), at the time the offences had been committed, and that he would not have been aware of and could not have controlled his actions. They further recommended that he be placed in a psychiatric hospital, as there was a risk that he could commit similar offences again. In an additional opinion of 12 January 2007 they confirmed their previous findings.

10. On 2 April 2007 the Katowice Regional Court decided to discontinue the proceedings against the applicant, on the basis that he could not be held criminally responsible. It further ordered that he be placed in a psychiatric hospital.

11. On 25 May 2007 the Katowice Court of Appeal quashed that decision and remitted the case.

12. The Katowice Regional Court examined the case at two hearings on 5 and 25 September 2007. On the former date the court heard evidence from the experts who had prepared the opinions. They confirmed their previous findings. T., an expert who spoke on behalf of the team, stated in particular that the experts had excluded the possibility that the applicant was simulating a mental illness. In support of this statement, he noted that the applicant had been medicated and subjected to a psychological personality test, the MMPI (Minnesota Multiphasic Personality Inventory). The results of the test had confirmed that he could not be feigning the symptoms of a mental illness, as a healthy person would have had a very different reaction to those specific medications. The applicant's lawyer supported the prosecutor's application for the proceedings to be discontinued.

13. On 25 September 2007 the Katowice Regional Court discontinued the proceedings against the applicant. On the basis of available evidence, the court established that the applicant had committed the offences with which he had been charged. However, as he had been suffering from a mental disorder at the time, he could not be held criminally responsible. The court referred to the experts' opinions and the evidence which they had given during the trial. It also noted that the applicant had undergone psychiatric treatment since 2000.

14. The applicant did not appeal against that decision, and it became final on 10 October 2007.

15. On 14 March 2012 the Katowice Court of Appeal refused an application by the applicant to reopen the proceedings in the case. The court admitted that, in view of new evidence (see paragraphs 44 and 46 below), it appeared that the applicant had not murdered P.A., and that he had only participated in the robbery. However, even if the proceedings were reopened, they would have to be discontinued in any event, in view of the applicant's insanity.

C. Detention in a psychiatric facility

1. Initial detention in a psychiatric facility

16. On 12 December 2007 the Psychiatric Commission on Security Measures (*Komisja Psychiatryczna ds. środków zabezpieczających* – "the Commission") recommended that the applicant be placed in Branice Hospital. The applicant could not be transferred there immediately, as he

was serving a sentence of 10 years' imprisonment imposed in the first set of criminal proceedings against him (see paragraph 6 above). The Katowice Regional Court asked the penitentiary division of the court to change the order in which the sentences would be served, and to apply the security measure first. On 25 April 2008 the court decided that the applicant should first be placed in a psychiatric facility.

17. The applicant was admitted to Branice Hospital on 13 May 2008.

18. A hospital psychologist, in opinions of 23 June and 15 December 2008, 20 May and 5 November 2009, confirmed that the applicant should continue treatment in hospital. In her opinion of 20 April 2010 the expert noted that the applicant could be moved to a less secure hospital.

19. Psychiatrists from Branice Hospital, in opinions of 14 June and 9 December 2008, 19 May and 9 November 2009 and 20 April 2010, also confirmed that the applicant should continue treatment in a psychiatric hospital. In particular, in the opinion of 9 November 2009 the doctors concluded that the applicant was suffering from a delusional disorder related to organic lesions in his central nervous system (*zaburzenia omamowo-urojeniowe na podłożu organicznego uszkodzenia o.u.n*.). There had been an improvement in his condition following the treatment, however there had been no complete recovery. Accordingly, the applicant's detention was extended by the Katowice Regional Court on 21 July 2008, 19 January, 22 June and 7 December 2009. Neither the applicant nor his representative appealed against those decisions.

20. On 4 May 2010 the applicant was transferred to Lubliniec Hospital, a less secure institution.

21. On 29 October 2010 experts from Lubliniec Hospital gave an opinion following a periodic review of the applicant's condition. They noted that the applicant should continue treatment in a more secure facility. Consequently, on 15 November 2010 the Katowice Regional Court again extended the applicant's detention.

22. In a joint opinion of 26 August 2011, Lubliniec Hospital psychiatrists confirmed that the applicant should continue treatment in a secure facility, as he still posed a serious threat to public order.

2. Psychiatric assessment in Pruszków Hospital

23. Between 28 March and 22 May 2012 the applicant underwent a psychiatric assessment in Pruszków Hospital, pursuant to an order made in the course of the third set of criminal proceedings against him (see paragraph 45 below). The relevant experts were asked to assess his mental state when he had allegedly committed other robberies between June and August 2005 (see paragraph 44 below).

24. On 17 June 2012 two psychiatrists and a psychologist gave a joint opinion ("the Pruszków opinion"), which disagreed with the 2006 opinion (see paragraph 9 above). They concluded that the applicant had not been

suffering from any mental illness at the time when the offences had been committed (*tempore criminis*). In their view, the applicant did not have any organic lesions in his central nervous system. Nor did he have a learning difficulty. They agreed that he had a dissocial personality disorder. They noted that, from an early age, the applicant had disregarded the rights and feelings of others, as well as social norms. He also failed to learn from his actions and repeated dysfunctional behaviour. However, they were of the opinion that his condition had significantly improved in recent years. While the risk that he would commit a similar offence was not very high, it could not be excluded that, in difficult situations, he might suffer from reactive disorders. It was therefore recommended that any prison sentence served by the applicant should be served in therapeutic conditions. The opinion was submitted to the Katowice Regional Court on 11 September 2012.

3. Expert opinion in the process of periodic review

25. Meanwhile, on 20 July 2012 psychiatrists from Lubliniec Hospital, in an opinion following a periodic review of the applicant's condition ("the Lubliniec opinion"), had noted that the applicant had been diagnosed with delusional disorders related to organic lesions in his central nervous system. During his stay in Lubliniec Hospital, no acute psychotic symptoms had been observed. However, in view of the initial diagnosis and his lifestyle, it was felt that the applicant should continue treatment at a psychiatric hospital, as there was still a risk that he might commit criminal offences of significant harm to the community.

4. The applicant's initial applications for release

26. At hearings held on 28 August and 24 September 2012 the Katowice Regional Court examined the applicant's application for release of 24 July 2012. The court heard evidence from Lubliniec experts who had given the opinion of 20 July 2012 (see paragraph 25 above). One of the experts clarified that, in assessing the possible risk of the applicant committing criminal offences, she had relied on the initial diagnosis and his lifestyle (his multiple convictions and the fact that he was young and single with no children). She further agreed with the Pruszków experts' opinion (see paragraph 24 above) that the applicant suffered from a personality disorder. His personality disorder was characterised by a tendency to manipulate and dominate others, and he was self-centred. These elements constituted a risk that the applicant might commit a criminal offence. The expert was not able to answer the court's question as to whether the applicant could have simulated a mental illness.

27. On 24 September 2012 the Katowice Regional Court dismissed the applicant's application to be released from hospital. With reference to the discrepancies between the two expert opinions, the court held that the

Pruszków opinion concerned the applicant's capacity *tempore criminis*, while the Lubliniec opinion related to his general progress in treatment and his future prognosis. Moreover, the Pruszków opinion had been given with reference to different offences. The court also noted that both sets of experts agreed that the applicant had suffered from a dissocial personality disorder. In view of the above, the court decided to base its conclusion on the Lubliniec opinion and refused to release the applicant from detention. It also held that he should continue treatment in a less secure institution. The applicant did not appeal against that decision.

28. On 28 November 2012 the Katowice Regional Court dismissed a further application by the applicant to be released from detention. It noted that his situation had not changed since the last decision had been given. It further decided to place him in a facility with enhanced security. It referred to a letter in which he had informed the authorities that he had been considering an escape from the psychiatric facility. That decision was upheld by the Katowice Court of Appeal on 22 January 2013.

5. The applicant's first suicide attempt.

29. On 31 January 2013 the applicant attempted to commit suicide by overdosing on his medication.

30. On 13 February 2013, the applicant was transferred to Cracow Psychiatric Hospital (a hospital with enhanced security).

6. The alleged simulation of mental illness

31. On 19 May 2013 the applicant sent a letter to the Katowice Regional Court, claiming that he had been simulating mental illness. He submitted that he owned a medical book on psychiatry and had also seen the film "A Beautiful Mind", which had helped him to act out the symptoms of mental illness. He also informed the director of Lubliniec Hospital that he had been pretending to have a mental illness. However, she told him that many patients made the same claim.

7. Proceedings for periodic review

32. Meanwhile, on 19 March 2013, in the context of periodic review proceedings, the Katowice Regional Court had decided to continue the applicant's detention in a psychiatric facility. The court relied on an expert opinion of 15 March 2013, in which experts from Cracow Psychiatric Hospital had confirmed that the applicant suffered from a dissocial personality and had suffered from a psychotic disorder in the past. They had stressed that there was a risk that the applicant would commit a similar offence of significant harm to the community as a result of his psychiatric condition. In particular, the experts had referred to the fact that the applicant was not critical of the offences he had committed or his medical condition.

That decision was upheld by the Katowice Court of Appeal on 16 April 2013.

33. On 27 August 2013, pursuant to Article 203 of the Code of Execution of Criminal Sentences (see paragraph 55 below), psychiatrists from Cracow Psychiatric Hospital submitted an opinion concerning the applicant following a periodic review. They confirmed that he had not been suffering from a mental illness, but had a severe dissocial personality disorder. They also noted that the applicant claimed to have suffered from a brief psychotic disorder in the past. They were convinced that, between June and August 2005, the applicant had been able to recognise the significance of his actions and control his behaviour. However, the experts considered that it was still likely that he would commit similar offences of significant harm to the community again as a result of his psychiatric condition. This risk was not related to a mental illness, but to a severe personality disorder. The applicant was still in need of complex therapy for personality disorders. They experts left the decision as to whether security measures should be continued to the court's discretion.

34. On 12 September 2013 the experts supplemented their opinion with regard to further questions put by the court. They confirmed that, at the time when the offences had been committed, the applicant had not been suffering from any delusional disorders which could have resulted in a conclusion that he had acted in a state of insanity. They also considered that it was highly likely that he would commit similar offences again. This risk was related to the applicant's lifestyle, his multiple convictions and his inability to learn social skills, but not to a mental illness. They stated that they could not recommend the applicant's release. Even if he had not been insane at the time when the offences had been committed, there was still a risk that he would commit further offences in view of his dissocial personality disorder. They further concluded that it was not a medical but a legal issue as to whether the applicant's detention should be lifted.

8. The applicant's further application for release

35. Subsequently, on an unknown date the applicant lodged an application for release. It was examined by the Katowice Regional Court at two hearings: on 17 October and 8 November 2013. The applicant's representative and psychiatrists were present. The court heard evidence from experts from Cracow Psychiatric Hospital. They disagreed with the 2006 opinion and confirmed that the applicant was suffering from a dissocial personality disorder. The experts stated before the court that they had not recommended the applicant's release, as they were aware that they could have been wrong in their assessment. The experts were also not in a position to give a clear answer to the question of whether the applicant could have simulated a mental illness. They submitted a supplementary opinion in which they noted that on 18 October 2013 the applicant had

attempted to commit suicide (see paragraph 39 below). In their opinion, in view of the applicant's fragile state, it was necessary to place him in a hospital with enhanced security.

36. On 8 November 2013 the court refused to release the applicant from detention. The court thoroughly examined diverging psychiatric opinions, in particular the 2006 opinion (see paragraph 9 above) and the opinions of 27 August and 12 September 2013 (see paragraphs 33 and 34 above). Relying on the testimonies obtained from experts, it concluded that there were no grounds to doubt the correctness of the 2006 opinion, especially after such a long lapse of time. The court also examined the question of whether the applicant could have simulated a psychotic disorder, and noted the experts' diverging views in this respect. It referred to T.'s expert testimony on 5 September 2007 (see paragraph 12 above) and to the testimony given by the Cracow experts on 17 October 2013 (see paragraph 35 above). It also held that the applicant had been detained in several hospitals, and none of the experts who had examined him there had challenged the initial diagnosis. Lastly, it referred to the applicant's recent suicide attempt. In conclusion, the court held that there was still a risk that the applicant might commit an offence of significant social harm.

37. On 22 November 2013 the applicant's lawyer lodged an appeal against that decision. He referred to the divergent expert opinions. He also stressed that the applicant had recently been indicted for offences committed in 2005, and that his sanity was not being questioned in those proceedings (see paragraph 45 below). On 25 November 2013 the applicant lodged his own appeal, submitting in particular that he had been simulating a mental illness.

38. The Katowice Court of Appeal examined the applicant's appeal at two hearings: on 21 January and 11 March 2014. On the latter date, relying on the evidence gathered by the Regional Court, it upheld the decision of 8 November 2013 (see paragraph 36 above). The court referred to the reasons given by the Regional Court and considered that it was still likely that the applicant would commit similar offences again.

9. The applicant's second suicide attempt

39. Meanwhile, on 18 October 2013, the applicant had attempted to commit suicide by injecting himself with a significant dose of insulin. He was transferred to the toxicology ward of Cracow University Hospital, where he was treated for two days.

10. The applicant's release from hospital

40. On 20 January 2014 the applicant was transferred to Toszek Psychiatric Hospital.

41. On 30 April 2014, pursuant to Article 203 of the Code of Execution of Criminal Sentences (see paragraph 55 below), psychiatrists from Toszek Hospital submitted an opinion concerning the applicant following a periodic review. They confirmed that he only had a dissocial personality disorder and it was unlikely that he would commit similar offences of significant harm to the community again as a result of his psychiatric condition. They further recommended his release from the psychiatric facility.

42. On 15 May 2014 the Katowice Regional Court appointed a new defence lawyer for the applicant, to replace the one who had resigned, and set a hearing date for 28 May 2014. On the latter date it heard evidence from the experts from the Toszek Hospital. The experts confirmed the findings they had made in the opinion of 30 April 2014.

43. On 30 May 2014 the Katowice Regional Court gave a decision and ordered the applicant's release from the psychiatric facility. The applicant was released on that date and transferred to Wojkowice Prison in order to serve the remainder of the sentence of imprisonment which had been imposed following the first set of criminal proceedings against him (see paragraph 6 above).

D. Third set of criminal proceedings against the applicant (several counts of robbery)

44. On 8 December 2010 the Katowice District Prosecutor charged the applicant with several counts of robbery (carjacking) committed between June and August 2005 (on 23 June, 27 June, 4 July, 5 July and 17 August 2005). Allegedly, the applicant, together with a certain A.I. and one other person, had stolen five cars by using force and intimidating the cars' drivers (by hitting, kicking and using tear gas). During his questioning, the applicant informed the prosecutor that A.I. had been involved in P.A.'s killing.

45. On 30 January 2012 the Katowice Regional Court ordered the applicant to undergo a psychiatric medical examination at Pruszków Hospital in order to assess his mental state at the time when the alleged offences had been committed. As indicated in paragraph 24 above, the medical opinion given by experts from Pruszków Hospital on 17 June 2012 stated that the applicant had had full mental capacity in 2005.

46. On 25 October 2013 a bill of indictment was lodged with the Katowice Regional Court. A.I. was charged with murdering P.A., and the applicant and a certain T.K. were only charged with theft and several counts of robbery committed in 2005. The trial before the Katowice Regional Court began in 2014.

47. During a hearing on 14 January 2015 the court heard evidence from the Cracow Hospital experts who had prepared the opinion of 27 August 2013. As indicated in paragraph 33 above, they confirmed that the applicant had not been suffering from a mental illness, but had a personality disorder.

They were also convinced that, between June and August 2005, the applicant had been able to recognise the significance of his actions and control his behaviour. The experts disagreed with the opinion of 2006 (see paragraph 9 above).

48. On 22 April 2015 the court heard evidence from psychiatrists from Pruszków Hospital who had prepared the opinion of 17 June 2012 (see paragraph 24 above). They confirmed that, in their opinion, the applicant had not been suffering from a mental illness. They further agreed that it was very likely that the applicant had pretended to have symptoms of a mental illness.

49. On 22 May 2015 the court heard evidence from the psychologist who, together with two psychiatrists, had prepared the opinion of 18 July 2006 (see paragraph 9 above). He stated that the applicant could have simulated a brief psychotic disorder (*zaburzenia psychotyczne*) during the psychological tests.

50. On 20 July 2015 the Katowice Regional Court gave judgment. The court established that the applicant, together with A.I. and a certain T.K. had participated in the assault on P.A.. The criminal proceedings against the applicant were subsequently discontinued due to his insanity. The court further thoroughly examined the applicant's mental capacity and found that the applicant had had full mental capacity in the relevant period. It convicted A.I. of P.A.'s murder, T.K. of robbery and assault on P.A. and the applicant of several counts of robbery committed on 23 June, 27 June, 4 July, 5 July and 17 August 2005. It also sentenced the applicant to three years' imprisonment, suspended for seven years.

51. The applicant did not lodge an appeal against that judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions on criminal liability

52. Article 31 § 1 of the Criminal Code contains rules on the absence of criminal liability owing to mental disorders. It provides that, where a person commits an act, if the person is incapable of recognising the significance of the act or controlling his or her actions owing to a mental illness, a mental deficiency or any other serious mental abnormality, that person is not guilty of an offence.

B. Security measure and its execution

1. Criminal Code

53. Article 93 of the Criminal Code, in its wording until 1 July 2015, read:

> "The court may impose a security measure (*środek zabezpieczający*) as provided for in this chapter, which involves committal to a secure medical institution only if necessary in order to prevent the repeated commission of a prohibited act by an offender suffering from mental illness ... mental impairment, or addiction to alcohol or other narcotic drugs. Before imposing such a measure, the court shall hear evidence from psychiatrists and a psychologist..."

54. Article 94, in its wording until 1 July 2015 read:

> "1. If an offender has committed a prohibited act in a state of insanity as specified in Article 31 § 1, causing significant harm to the community, and there is a high probability that he will commit such an act again, the court shall commit him to a suitable psychiatric institution.
>
> 2. The duration of the stay at the institution shall not be fixed in advance; the court shall release the offender from the institution if his stay there is no longer deemed necessary.
>
> 3. The court may reorder the committal of an offender (as specified in paragraph 1) to a suitable psychiatric institution if it is advisable in the light of the circumstances specified in paragraph 1 or Article 93; such an order may not be issued more than five years after release from the institution."

2. Code of Execution of Criminal Sentences

55. The relevant parts of Article 203 of the Code of Execution of Criminal Sentences read as follows:

> "1. The director of a closed institution in which a security measure is being executed shall send the court, no less than every six months, an opinion on the state of health of the perpetrator placed in the institution and the progress of his or her treatment or therapy. The opinion shall be sent immediately if, due to a change in the perpetrator's state of health, the director finds that his or her further detention in the institution is unnecessary.
>
> 2. The court may request, at any time, an opinion on the state of health of the perpetrator placed in an institution referred to in paragraph 1, the treatment or therapy administered, and the results thereof."

56. Article 204 reads:

> "1. No less than every six months, and in the event of receiving an opinion that further detention of the perpetrator in a secure medical institution in which a **security** measure is being executed is unnecessary, the court shall immediately make a decision as regards the further execution of that measure. If necessary, the court shall refer to the opinion of other medical experts.
>
> The decision as regards the further execution of a security measure may be appealed against."

C. Provisions relating to involuntary admission

57. Provisions relating to involuntary admission to a mental health facility are included in the Mental Health Protection Act (*ustawa o ochronie zdrowa psychicznego*) of 1994. Pursuant to this Act, the admission to a psychiatric hospital of a person who has a mental health disorder or who is mentally disabled and does not consent to treatment in the hospital must be approved by a civil court. Section 23 of that Act indicates that a mentally ill person may only be involuntarily admitted to a psychiatric hospital if, because of the illness, he or she is a threat to his or her own life or to another person's health or life.

THE LAW

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

58. The applicant complained under Article 5 of the Convention that his detention in a psychiatric hospital had been unlawful. The Court considers that the complaint falls to be examined under Article 5 § 1 (e) of the Convention, which 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:
>
> ...
>
> (e) the lawful detention ... of persons of unsound mind ..."

A. Admissibility

59. 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

1. The parties' submissions

(a) The applicant

60. The applicant submitted that, during the criminal proceedings against him, he had been simulating a mental illness, which had been his adopted line of defence.

61. The applicant further maintained that, despite the fact that in June 2012 the Pruszków experts had confirmed that he had not been suffering from a mental illness at the time when the offences had been committed (see paragraph 24 above), the domestic courts had refused to release him from hospital. He also referred to the expert opinion of 27 August 2013 which challenged the basis of his detention (see paragraph 33 above).

(b) The Government

62. The Government submitted that the applicant had been detained in a psychiatric hospital between 13 May 2008 and 30 May 2014. At the relevant time, when his detention had been ordered, he had been reliably shown to be suffering from a "true mental disorder" on the basis of medical expertise. They referred to the decision of the Katowice Regional Court of 25 September 2007, which was based on medical reports (see paragraph 13 above). They further maintained that the requirement that the disorder must be of a kind or degree warranting compulsory confinement had also been entirely fulfilled.

63. Lastly, the Government submitted that the necessity of the applicant's continued detention had been systematically examined by the domestic authorities. When extending the applicant's confinement, the courts had relied on a recent psychiatric opinion each time. Furthermore, when there had been contradictory expert opinions, the domestic courts had heard the experts in order to resolve all doubts. Lastly, when the courts had lifted the applicant's detention, he had been released from hospital.

2. The Court's assessment

(a) General principles

64. The Court reiterates that, for the purposes of Article 5 § 1 (e), an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33, and *Stanev v. Bulgaria* [GC], no.36760/06, § 145, ECHR 2012).

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

65. The Court notes at the outset that the applicant does not allege unlawfulness of the initial decision of 25 September 2007 and his subsequent detention in execution of the security measure (see paragraph 13

above). Rather, he complains that his detention became unlawful after 17 June 2012, when the experts confirmed that he had not been suffering from a mental illness at the time when the offences had been committed, that is between June and August 2005 (see paragraph 61 above).

66. Accordingly, the Court will focus its examination on the period starting on 17 June 2012, the date of the Pruszków opinion, in which the experts reached the above conclusion (see paragraph 24 above). However, the events dating back to the establishment of his insanity in 2006, which resulted in the imposition of the security measure, will be considered as an important background in reviewing his deprivation of liberty in the period from 17 June 2012 to 30 May 2014, the date of his release.

67. Having regard to the above general principles (see paragraph 64 above), the Court will first examine whether the applicant was reliably shown to be of unsound mind. In other words, whether a true mental disorder was established before a competent authority on the basis of objective medical expertise (see *Petschulies v. Germany*, no. 6281/13, § 67, 2 June 2016).

68. The Court observes that the initial validity of the security measure was not contested in the present case. It notes that in September 2007 the Katowice Regional Court found that the applicant was suffering from a delusional disorder related to organic lesions in his central nervous system, and also from a personality disorder. That conclusion was based on expert opinions and further expert testimony before the court (see paragraphs 9 and 12 above). The domestic court subsequently discontinued the proceedings and ordered the applicant's confinement in a psychiatric hospital (see paragraph 13 above).

69. The Court further notes that subsequently the medical diagnosis, the essential element on which the applicant relied, altered. On 17 June 2012 a different set of experts assessing the applicant in the context of another set of proceedings (yet in respect of offences allegedly committed by him during the same period of time, June-August 2005), reached the conclusion that the applicant had a dissocial personality disorder (see paragraph 24 above). The experts examining the applicant as part of a periodic review agreed with that assessment (see paragraphs 26, 32-35 above). In their view, the applicant's personality disorder was characterised by a disregard for the rights and feelings of others and social norms, a failure to learn from his actions, repeated dysfunctional behaviour, a tendency to manipulate and dominate others, and his being self-centred (see paragraphs 24 and 26 above). Those findings were subsequently analysed in depth by the Katowice Regional Court (see paragraph 27 above).

70. In the Court's view, having regard to the manner in which the applicant's personality disorder manifested itself, it is doubtful whether the Katowice Regional Court could be said to have established that he was "of unsound mind" within the meaning of Article 5 § 1 (e) of the Convention.

71. However, even assuming that the applicant was reliably shown to be of unsound mind, it remains to be examined whether that disorder was of "a kind or degree warranting confinement".

72. The Court notes firstly that initially the applicant's mental disorder was indeed considered so serious that he was found to have acted in a state of insanity for the purposes of Article 31 § 1 of the Criminal Code. However, subsequently the experts changed their opinion and agreed that the applicant had been able to recognise the significance of his actions and control his behaviour (see paragraphs 24 and 33 above).

73. The Court has repeatedly stressed that the permissible grounds for deprivation of liberty listed in Article 5 § 1 are to be interpreted narrowly (see, among others, *Shimovolos v. Russia*, no. 30194/09, § 51, 21 June 2011 above). Moreover, in order to amount to a true mental disorder for the purposes of sub-paragraph (e) of Article 5 § 1, the mental disorder in question must be so serious as to necessitate treatment in an institution appropriate for mental health patients (see *Glien v. Germany*, no. 7345/12, § 85, 28 November 2013). The Court has further expressed doubts as to whether a person's dissocial personality or dissocial personality disorder alone could be considered a sufficiently serious mental disorder so as to be classified as a "true" mental disorder for the purposes of Article 5 § 1 (e) (see *Petschulies*, cited above, §77).

74. The Court is doubtful whether, in the present case, the applicant's condition was indeed so serious that it warranted compulsory confinement during the whole period in question. In this regard, it points out that on 17 June 2012 the experts considered that his condition had significantly improved over the years (see, paragraph 24 above). In the context of a further periodic review, on 20 July 2012 the experts stressed that during the applicant's stay in Lubliniec Hospital no acute psychotic symptoms had been observed (see paragraph 25 above). Equally, in their opinion of 27 August 2013 the experts noted that, while the applicant claimed to have suffered from a brief psychotic disorder in the past, at that time he only had a severe dissocial personality disorder (see paragraph 33 above). At the same time, they also observed that the question as to whether the applicant's detention should be lifted was a legal issue, not a medical one (see paragraph 34 above).

75. With regard to the potential risk posed by the applicant's release, the Court observes that the domestic courts relied on a risk that the applicant might commit a similar criminal offence of significant harm to the community (see paragraphs 32, 36 and 38 above). Initially, the security measure applied in respect of the applicant was indeed mainly based on his involvement in the murder of P.A. (see paragraphs 7 and 13 above). However, later on, in the course of the third set of proceedings, another person was charged with P.A.'s murder and the applicant was only charged with several counts of robbery and theft (see paragraph 46 above). It would

thus appear that, with the passage of time and the developments regarding the factual basis for the assessment, the possible risk of his reoffending became less significant (see paragraphs 24, 31, 33, 34 and 41 above).

76. In the Court's opinion, in extending the applicant's detention in psychiatric hospital beyond 17 June 2012, no sufficient consideration was given to whether the applicant represented an imminent danger to others or to himself (see, *mutatis mutandis*, *Plesó v. Hungary*, no. 41242/08, § 65, 2 October 2012, and *Stanev*, cited above, § 157). The Court further considers that the reasons given by the domestic courts do not appear sufficient for this purpose (see, paragraphs 25, 27, 32 and 34 above).

77. In those circumstances, the Court is not persuaded that the domestic authorities established that the validity of the applicant's confinement could be derived from the persistence of a disorder of a kind or degree warranting compulsory confinement. Therefore, his detention between 17 June 2012 and 30 May 2014 fell short of the conditions assumed by Article 5 § 1 (e) of the Convention. There has accordingly been a breach of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

78. The applicant complained that he could not have effectively challenged the lawfulness of his continued detention. The complaint falls to be examined under Article 5 § 4 of the Convention, which provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

79. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

80. The applicant submitted that, during his detention in hospital, he had had no access to an effective procedure by which to challenge the lawfulness of his detention.

(b) The Government

81. The Government maintained that the procedure by which the applicant had sought to challenge the lawfulness of his detention in a psychiatric facility was in conformity with Article 5 § 4 of the Convention. They submitted that only on one occasion had the applicant made use of the possibility to lodge an appeal against a decision concerning the extension of his detention, namely he had appealed against the decision of 8 November 2013 (see paragraph 37 above). In addition, only on two occasions had he lodged applications to be released from hospital (on 24 July 2012 and on an unknown date in 2013 – see paragraphs 26 and 35 above), and both applications had been dismissed on the basis of expert opinions. The Government submitted that the applicant's legal representative had been present at the court hearings regarding the extension of the applicant's detention, and could have made submissions and lodged further applications. They concluded by stating that all decisions relating to the extension of the applicant's detention in a psychiatric facility had met the procedural standards set out in the Convention.

2. The Court's assessment

(a) General principles

82. The Court reiterates that, by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B; *Reinprecht v. Austria*, no. 67175/01, § 31 (a), ECHR 2005-XII; and *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012).

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

83. Turning to the circumstances of the present case, the Court accepts that the procedure for reviewing the need for the applicant's continued deprivation of liberty was accessible to him; the domestic law provided for a periodic review of detention in psychiatric hospitals, and this procedure was followed. The procedure had a judicial character and the applicant had access to a court (see paragraphs 35- 38 and 56 above).

84. The Court further notes that the lawfulness of the applicant's detention in a psychiatric hospital was considered by the domestic courts on a number of occasions at various stages of the proceedings. In his applications for release, the applicant maintained in particular that he was not suffering from a mental illness and that he was feigning such symptoms. On each occasion the domestic court fixed hearings and examined the applicant's submissions. It also heard two sets of experts, thoroughly examined divergences in their opinions, and considered that the applicant's

detention was justified by his condition (see paragraphs 26, 35 and 38 above). The applicant had the opportunity to challenge each of those decisions before the Katowice Court of Appeal, which he did, on two occasions (see paragraphs 28 and 38 above).

85. The Court reiterates that, while Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of casting doubt on the existence of those conditions essential for the "lawfulness", for Convention purposes, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

86. In the present case the Court does not consider that the domestic courts treated as irrelevant or disregarded any of the concrete facts relied on by the applicant in his appeals. The Katowice Regional Court examined the arguments submitted by the applicant and rejected them by a reasoned decision. The Katowice Court of Appeal endorsed that reasoning. The Court is satisfied that the scope of the review of the lawfulness of the applicant's detention carried out by the domestic courts complied with the requirements of Article 5 § 4 of the Convention.

87. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 5 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed 8,261,000 euros (EUR) in respect of non-pecuniary damage.

90. The Government contested this claim

91. The Court notes that the applicant was detained in breach of Article 5 § 1 of the Convention between 17 June 2012 and 30 May 2014 (see paragraph 76 above). It considers that this must have caused him distress and frustration. Having regard to the specific circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicant EUR 15,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicant claimed EUR 4,000 for the costs of his legal representation before the Katowice Regional Court, together with 15% interest on that sum accrued from 2005 until the date of payment. He further asked for EUR 4,000 for the costs of his legal representation before the Court, together with 15% interest on that sum accrued from the date of filing his observations until the day of payment. Lastly, he asked for EUR 550 for translation costs, together with 15% interest on that sum accrued from the date of issue of the invoice until the day of payment, and EUR 280 for other costs (postage and copying).

93. The Government submitted that, apart from an invoice for unspecified translation services and a statement made by his representative confirming the amounts indicated, the applicant did not submit any documents confirming the costs and expenses claimed.

94. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant did not provide sufficient documentation as to his costs and expenses. He only submitted a document proving that he had incurred translation costs in the amount of EUR 550. Consequently, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and awards the sum of EUR 550 for costs and expenses in the proceedings before the Court.

C. Default interest

95. 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

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds*, unanimously, that there has been no violation of Article 5 § 4 of the Convention.

4. *Holds*, by five votes to two,
   (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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 550 (five hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Linos-Alexandre Sicilianos President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Pardalos and Wojtyczek is annexed to this judgment.

L.A.S.
A.C.

JOINT DISSENTING OPINION OF JUDGES PARDALOS AND WOJTYCZEK

1. We are not persuaded by the position of the majority in the instant case. In our view there has been no violation of Article 5 § 1 of the Convention.

2. The difficulty of the present case is connected with the fact that in 2012 two apparently divergent expert opinions concerning the mental health of the applicant were issued. The opinion of 17 June 2012 was prepared in a different set of criminal proceedings with the purpose of assessing his mental health at the time when he committed the acts at the basis of his indictment (see paragraph 24 of the judgment). The opinion of 20 July 2012 was prepared for the purpose of a periodic review of the applicant's condition (see paragraph 25 of the judgment).

3. In our view, the judgment is based on a misunderstanding of the factual circumstances of the case. We would like to supplement the facts described in the judgment with the following elements.

The psychiatric opinion of 20 July 2012 stated the following:

> "Krzysztof Nawrot has been diagnosed with delusional disorders related to organic lesions in his central nervous system (*zaburzenia omamowo-urojeniowe na podłożu zmian organicznych OUN*). During his stay in this department we have not observed acute psychotic symptoms. However, given the diagnosis and his lifestyle we consider that Krzysztof Nawrot should undergo rehabilitation and resocialisation in the Department of Forensic Psychiatry with basic security. In our view there is a probability that the individual concerned will commit offences causing significant harm."

The Katowice Regional Court held two hearings, on 28 August 2012 and 24 September 2012, during which experts were questioned in order to clarify discrepancies between the opinions of 17 June 2012 and 20 July 2012. When questioned at the hearing on 24 September 2012, an expert stated "in the strongest possible terms" (*z całą stanowczością*) that the applicant was suffering from a serious mental illness. She expressed the view that the risk of reoffending was high and explained that in the opinion of 20 July the adjective "high" in the assessment of the risk of reoffending was missing owing to a mistake.

The Katowice Regional Court, in its decision of 24 September 2012, stated that it was based on the opinion of 20 July 2012. The reasoning explained why the court had to follow that opinion and why the opinion of 17 June 2012 could not be decisive.

The majority state, in this context, in paragraph 70:

> "In the Court's view, having regard to the manner in which the applicant's personality disorder manifested itself, it is doubtful whether the Katowice Regional Court could be said to have established that he was 'of unsound mind' within the meaning of Article 5 § 1 (e) of the Convention."

We respectfully disagree. The domestic court relied on expert opinions established on 24 September 2012 stating that the applicant was suffering from a serious mental illness. Later, the courts addressed the dissocial personality disorder and, relying on expert opinions, considered that it was so severe that it warranted compulsory confinement. The reasoning of the decision of 24 September 2012, as well as the reasoning of the subsequent decisions, indicates the elements which justify the conclusion that the applicant was of unsound mind within the meaning of the above-mentioned provision.

Our colleagues, by referring *to the manner in which the applicant's personality disorder manifested itself,* decided to make their own assessment of the applicant's state of health. For our part we do not have sufficient expert knowledge to contest the findings of the domestic experts in this case.

More generally, we note that the national courts were in a far better position to assess the value of the expert reports and to determine the factual issue whether or not the applicant was suffering from a mental disorder of a kind or degree warranting compulsory confinement.

4. The psychiatric opinion of 15 March 2013 stated as follows:

> "... in the current state of Krzysztof Nawrot's health there is a **high** probability that he will commit a criminal offence of significant social harm related to his psychiatric illness. Krzysztof Nawrot still requires treatment as a preventive measure in a department with enhanced security" (emphasis added).

On 27 August 2013 the experts noted that there was still "... a **high risk** of [the applicant's] committing further criminal offences although this risk is not connected with a psychiatric illness but with his deeply disordered personality" (emphasis added).

The opinion of 12 September 2013 stated:

> "There is a **high risk** of [the applicant's] committing further criminal offences but this risk is not connected to a psychiatric illness. ... We have established a deep personality disorder of a dissocial nature. ... We have not established a psychiatric illness in the sense of long-term psychosis" (emphasis added).

The supplementary opinion of 18 October 2013 stated as follows:

> "... given that there is a **high risk** that Krzysztof Nawrot will commit [criminal] acts of a similar nature to the one referred to in the order for his placement in detention, or will escape from an enhanced security facility, we recommend that the patient be placed in a maximum security facility in continuation of the preventive measures" (emphasis added).

The opinion also stated that there was a high risk of suicide.

The majority state in paragraph 75:

> "It would thus appear that, with the passage of time and the developments regarding the factual basis for the assessment, the possible risk of his reoffending became less significant (see paragraphs 24, 31, 33, 34 and 41 above)."

In paragraph 76, they further affirm:

> "In the Court's opinion, in extending the applicant's detention in psychiatric hospital beyond 17 June 2012, no sufficient consideration was given to whether the applicant represented an imminent danger to others or to himself (see, *mutatis mutandis*, *Plesó v. Hungary*, no. 41242/08, § 65, 2 October 2012, and *Stanev*, cited above, § 157)."

We respectfully disagree. The experts clearly stated in 2012 and 2013 that there was a **high risk** that the applicant would commit further violent crimes.

We note moreover that in *Plesó*, cited above, the Court referred to the **imminent danger** test because it was the criterion laid down in the Hungarian legislation for compulsory psychiatric confinement. The Grand Chamber judgment in the case of *Stanev* ([GC], no. 36760/06, § 157, ECHR 2012) established the criterion of **danger to oneself or others** as follows:

> "In the present case, however, it has not been established that the applicant posed a danger to himself or to others, for example because of his psychiatric condition ..."

In our opinion, the present judgment departs from the *Stanev* test in this respect.

5. In paragraph 50 the Court correctly establishes the following circumstances:

> "On 20 July 2015 the Katowice Regional Court gave judgment. The court established that the applicant, together with A.I. and a certain T.K. had participated in the assault on P.A. The criminal proceedings against the applicant were subsequently discontinued due to his insanity. The court further thoroughly examined the applicant's mental capacity and found that the applicant had had full mental capacity in the relevant period. It convicted A.I. of P.A.'s murder, T.K. of robbery and assault on P.A. and the applicant of several counts of robbery committed on 23 June, 27 June, 4 July, 5 July and 17 August 2005. It also sentenced the applicant to three years' imprisonment, suspended for seven years."

In paragraph 75, however, the majority state the following:

> "Initially, the security measure applied in respect of the applicant was indeed mainly based on his involvement in the murder of P.A. (see paragraphs 7 and 13 above). However, later on, in the course of the third set of proceedings, another person was charged with P.A.'s murder and the applicant was only charged with several counts of robbery and theft (see paragraph 46 above)."

We respectfully disagree. The above-quoted views contradict the factual findings presented in paragraph 50. It has been established that the applicant, together with other persons, participated in the assault during which P.A. was killed. The proceedings against the applicant were discontinued owing to insanity, not because he did not participate in that crime. The other charges were related to completely different crimes committed during the same period.

As the majority see it, the applicant was "only charged with several counts of robbery and theft". In our view, the applicant was charged with no

less than several counts of robbery, that is to say, serious and violent crimes. Moreover, he was finally convicted of all those crimes. At least one of the violent acts for which he was prosecuted resulted in the death of the victim. In those circumstances there were reasonable grounds to consider that there was a serious risk that the applicant might reoffend and again pose a threat to the life or health of other persons. This high risk was stated in the expert opinions on which the domestic courts relied.

6. The majority state the following in paragraph 76:

> "The Court further considers that the reasons given by the domestic courts do not appear sufficient for this purpose [of extending the applicant's detention] (see paragraphs 25, 27, 32 and 34 above)."

We respectfully disagree. We note that the applicant was examined by psychiatrists and a psychologist at regular intervals in the context of periodic reviews, and that each time the result of the psychiatric examination served as the basis for a fresh judicial decision extending his confinement in the psychiatric unit (see paragraphs 18, 19, 21, 22, 25, 32 and 33 of the judgment). The experts opined that the risk of his committing further violent crimes was high. The domestic courts carefully addressed the mental health of the applicant as well as the severity of the applicant's dissocial personality disorder (see paragraphs 27 and 32 of the judgment). With reference to the expert opinions, the domestic courts repeatedly held that there was a risk that, if released, the applicant would commit yet another criminal offence of significant harm to the community (see paragraphs 27, 32, 36 and 38). Later on, in addition to the risk of his committing further similar offences, the court justified continuation of the applicant's detention by referring to his second suicide attempt and his consequent fragile condition (see paragraphs 36 and 39 of the judgment). The domestic courts took into consideration the evolution of the applicant's mental health, since, depending on his condition as continually assessed by experts, he was transferred between less secure hospitals and facilities with enhanced security (see paragraphs 20 and 30). When confronted with conflicting experts opinions the judge held extensive hearings in order to question the experts. Moreover, when on 30 April 2014 the experts confirmed that the applicant's condition had improved and that it was unlikely that he would commit similar offences in the future (see paragraph 41 of the judgment), the court promptly set a hearing date and within one month ordered the applicant's release from hospital (see paragraphs 42 and 43).

In those circumstances, the authorities, in our view, displayed the necessary diligence in assessing the applicant's condition and the domestic decisions were correctly reasoned.

7. The majority rightly note that the applicant did not contest the initial placement order. We would like to emphasise that, on the other hand, the applicant alleged that he had simulated mental illness. This is a very

important factual circumstance in the case and we regret that the majority decided not to address it.

If the mental illness was simulated, then it is necessary to take into account the fact that the applicant himself contributed to his prolonged placement in a psychiatric hospital. He should then bear the consequences of his deliberate choice. His application before this Court could have been dismissed as abusive. We note furthermore that the applicant's mental illness was the basis for the discontinuation of one set of criminal proceedings against him. If the illness was simulated then he should have been criminally liable for the offence for which he was prosecuted. However, his attitude resulted in his obtaining substantial pecuniary compensation for the situation to which he had himself contributed – as is clear from his own statements.

8. The majority restate in paragraph 67:

> "The Court has further expressed doubts as to whether a person's dissocial personality or dissocial personality disorder alone could be considered a sufficiently serious mental disorder so as to be classified as a 'true' mental disorder for the purposes of Article 5 § 1 (e) (see *Petschulies*, cited above, § 77)."

We note, in this respect, that in the present case the domestic courts addressed this issue. Firstly, as noted above, the applicant's personality disorder was not the only basis for his confinement, as the experts established, at least until 2012, that the applicant was suffering from a mental illness. Secondly, as mentioned above, the severity of the applicant's personality disorder was analysed and the courts established that it was so severe that it warranted compulsory confinement. We therefore consider that the second criterion laid down in the *Winterwerp* judgment ("unsound mind") was fulfilled in the present case.

9. To sum up: in our opinion, in the instant case the majority did not give sufficient consideration to certain important factual circumstances of the case. The reasons given by the majority to justify finding a violation of Article 5 § 1 of the Convention do not appear sufficient for this purpose.