



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

FIRST SECTION

CASE OF BARANOWSKI v. POLAND

(Application no. 28358/95)

JUDGMENT

STRASBOURG

28 March 2000

In the case of Baranowski v. Poland,

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

Mrs E. PALM, *President*,

Mr L. FERRARI BRAVO,

Mr J. MAKARCZYK,

Mr R. TÜRMEŃ,

Mr B. ZUPANČIČ,

Mr T. PANȚIRU,

Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 26 October 1999 and 7 March 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 2 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 28358/95) against the Republic of Poland lodged with the Commission under former Article 25 by a Polish national, Mr Janusz Baranowski ("the applicant"), on 24 May 1994. The applicant alleged a violation of Article 5 §§ 1 and 4 and Article 6 §§ 1 and 2 of the Convention.

2. The Commission declared the application partly admissible on 8 December 1997. In its report of 28 May 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 5 § 1 in that the applicant's detention under the bill of indictment had been unlawful and that there had been a violation of Article 5 § 4 in view of the length of the proceedings relating to the lawfulness of his detention¹.

3. Before the Court the applicant was represented by Mr J. Szczepaniak, a lawyer practising in Łódź. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

4. On 20 January 1999 a panel of the Grand Chamber determined that the case should be decided by one of the Sections (Rule 100 § 1 of the Rules of Court). It was thereupon assigned to the First Section.

5. The applicant and the Government each filed a memorial.

1. *Note by the Registry.* The report is obtainable from the Registry.

6. After consulting the Agent of the Government and the applicant's lawyer, the Chamber decided that it was not necessary to hold a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 1 June 1993 the applicant was arrested by the police. On the next day the Łódź Regional Prosecutor (*Prokurator Wojewódzki*) charged him with fraud and detained him on remand on the grounds specified in Article 217 § 1 (2) and (4) of the Code of Criminal Procedure of 1969. On 25 June 1993 the Łódź Regional Court (*Sąd Wojewódzki*), ruling on the applicant's appeal, upheld the detention order.

8. On 10 August 1993 the Łódź Regional Court, at the prosecutor's request, prolonged the applicant's detention until 31 December 1993. The court based its ruling on the grounds originally given for his detention and the fact that the investigation had not been completed since further evidence needed to be obtained.

9. On 30 December 1993 the Łódź Regional Court, on a further request by the Łódź Regional Prosecutor, prolonged the applicant's detention on remand until 31 January 1994. The court relied on the same grounds as those mentioned in its decision of 10 August 1993. On 7 January 1994 the applicant lodged an appeal against the decision prolonging his detention.

10. Shortly afterwards, on an unspecified date, the investigation was completed. Subsequently, on 11 January 1994, the Łódź Regional Prosecutor lodged a bill of indictment with the Łódź Regional Court.

11. On 21 January 1994 the Łódź Regional Court referred the applicant's appeal of 7 January 1994 to the Łódź Court of Appeal (*Sąd Apelacyjny*). On 1 February 1994 the Court of Appeal held that it "was purposeless" to examine this appeal and decided that it should be deemed to be an application for release. The court observed that a decision on the prolongation of detention on remand was necessary only at the investigation stage. Therefore, after the investigation was completed and the bill of indictment was lodged, the applicant could simply file an application for release at any time with the court competent to deal with his case, pursuant to Article 214 of the Code of Criminal Procedure. As a consequence of that decision, the appeal was referred back to the Łódź Regional Court. The applicant was informed thereof on 18 February 1994. However, in the subsequent proceedings, the Łódź Regional Court did not examine the appeal in question either as an application for release under Article 214 of the Code of Criminal Procedure or under any other head.

12. Meanwhile, on 1 February 1994, the applicant had filed a formal petition with the Łódź District Prosecutor (*Prokurator Rejonowy*). He informed the prosecutor that the order for his detention had expired on 31 January 1994, so that his continued detention had become unlawful and unfounded.

13. Later, on 7 February 1994, the applicant lodged an application for release with the Łódź Regional Court, arguing, in particular, that he should be released in view of the bad state of his health. On 8 February 1994 the court, sitting in camera, ordered that the authorities of the prison hospital at the Łódź Remand Centre submit a medical report on the applicant's current state of health. It adjourned the examination of the application without fixing a date for a further session.

14. It appears that the applicant repeatedly complained to the authorities that his detention under the bill of indictment had become unlawful since, on 16 February 1994, in reply to those complaints, J.L., the President of the Criminal Division of the Łódź Regional Court, sent a letter to the applicant, the relevant part of which read as follows:

“The Łódź Regional Court hereby informs the accused that, since the bill of indictment was submitted to the Łódź Regional Court, the Łódź Regional Prosecutor placed the detainee at the disposal of that court. ... From then on, the accused has been at the Łódź Regional Court's disposal [and will be] until the detention order is quashed (at the [applicant's] or his lawyer's request, or [at the request of] the Łódź Remand Centre's administration – for instance on the ground of his bad state of health).

In case an application for release is not allowed, detention may continue until the first-instance judgment is delivered.

In such cases, after the delivery of the judgment, the court makes a decision on whether detention shall continue further. Therefore, the accused's assertion that his detention [order] has expired is unjustified ...”

15. On 18 February 1994 doctors from the prison hospital submitted the report requested by the trial court. They stated that the applicant could undergo medical treatment in that hospital. They suggested, however, that he be examined by a cardiologist, a psychiatrist and a neurologist.

16. On 25 February 1994 the court again adjourned the examination of the application for release, finding that reports from the said medical experts had to be obtained to establish whether the applicant should be released on health grounds.

17. On 28 March 1994 the applicant filed another application for release with the Łódź Regional Court.

18. On 29 March 1994 an expert cardiologist submitted a report to the court. On 1 April 1994 the court found it necessary to place the applicant in the prison hospital but adjourned its decision on his applications for release until the expert psychiatrist and neurologist had submitted their joint report. The report was ready on 28 April 1994; however, on 6 May 1994, the court,

at the request of the Łódź Regional Prosecutor, again adjourned the examination of the applications and ordered that certain – unspecified – evidence concerning the state of the applicant's health be obtained.

19. On 24 May 1994 the court ruled on the applications for release dated 7 February and 28 March 1994 respectively. It held that no circumstances justified altering the preventive measure in issue. The decision was based on Articles 209 and 217 § 1 (2) and (4) of the Code of Criminal Procedure. On 5 July 1994 the Łódź Court of Appeal, ruling on the applicant's appeal, upheld that decision.

20. In the meantime, since 16 February 1994, the applicant had been requesting the Łódź Regional Court to give an interpretation of the detention order of 30 December 1993, in particular as to whether or not that order had remained enforceable after its expiry. He lodged these requests under Article 14 of the Code of Execution of Criminal Sentences on the following dates: 16 and 25 February, 4 March, 8 and 18 April, 20 and 30 May, and 25 October 1994. The applicant argued that the fact that the indictment had been lodged with the court did not mean that his detention automatically continued after 31 January 1994. He further submitted that no provision of the Code of Criminal Procedure provided that detention was prolonged as a result of the transfer of the case to the court. He asserted that the order of 30 December 1993 was not enforceable as he had lodged an appeal against it. The applicant concluded that he should have been released immediately after 31 January 1994 because his detention as from that date lacked any legal basis.

21. On 21 December 1994 the Łódź Regional Court sitting with a single judge rendered a decision on all the above requests. The court held that the decision of 30 December 1993 to prolong the applicant's detention until 31 January 1994 was enforceable, despite the fact that the applicant had lodged an appeal against it. The judge further reiterated the arguments set out in the letter to the applicant of 16 February 1994.

22. On 29 December 1994 the applicant appealed. He submitted that the court should have been composed of three judges in accordance with the relevant provisions of the Code of Criminal Procedure. He again argued that there was no legal basis for keeping him in detention after 31 January 1994. On 3 January 1995 a panel of three judges of the Łódź Regional Court quashed the contested decision. The court found that the first-instance court should have been composed of three judges, as submitted by the applicant. However, it also held that Article 14 of the Code of Execution of Criminal Sentences was not applicable in the applicant's case since that provision applied only to cases involving doubts concerning the execution of the sentence or the calculation of the penalty imposed and not to the execution of detention orders.

23. On 10 January 1995 the applicant appealed. On 16 January 1995 the President of the Criminal Division of the Łódź Regional Court issued an

order refusing to allow the applicant's appeal on the basis that it was inadmissible in law. The applicant filed a further appeal against that decision. On 17 February 1995 the Łódź Regional Court upheld the decision of 16 January 1995, considering that it had been open to the applicant to file an appeal against the decision of 21 December 1994, but that any further appeal was inadmissible in law since Article 14 of the Code of Execution of Criminal Sentences did not apply to a detainee.

24. On 22 October 1996 the Łódź Regional Court quashed the detention order and released the applicant under police supervision. The criminal proceedings against the applicant are still pending in the court of first instance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. At the material time the domestic provisions governing detention on remand were contained in the Code of Criminal Procedure of 1969, which is no longer in force as it was repealed and replaced by the Code of Criminal Procedure of 6 June 1997 (currently referred to as the “New Code of Criminal Procedure”).

26. The Code of Criminal Procedure of 1969 listed detention among the so-called “preventive measures” (those measures including, *inter alia*, detention on remand, bail and police supervision). Until 4 August 1996 (that is, the date on which the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes came into force) a prosecutor was empowered to order all preventive measures as long as the investigation lasted. Also, at the time the national law did not set out any statutory time-limits concerning the length of detention on remand in court proceedings; however, under Article 210 § 1 of the Code of Criminal Procedure a prosecutor was obliged to determine in his decision the period for which detention was ordered.

That Article stated (in the version applicable at the material time):

“Preventive measures shall be ordered by the court; before a bill of indictment has been lodged with the competent court, those measures shall be ordered by the prosecutor.”

The relevant part of Article 222 of the Code of Criminal Procedure (in the version applicable at the material time) stated:

“1. The prosecutor may order detention on remand for a period not exceeding three months.

2. When, in view of the particular circumstances of the case, the investigation cannot be completed within the period referred to in paragraph 1, detention on remand may, if necessary, be prolonged by:

(1) the court competent to deal with the case, at the prosecutor's request, for a period not exceeding one year;

(2) the Supreme Court, at the request of the Prosecutor General, for such further fixed term as is required to terminate the investigation.”

27. The courts, when ruling on a prosecutor's request under Article 222 § 2 of the Code, were obliged to determine the precise period for which detention should be prolonged. If they refused to prolong detention or if the prosecutor failed to submit a request for a further prolongation before or on the expiry of the last detention order (regardless of whether it had been made by him or by a court), the detainee had to be released immediately.

28. Article 213 § 1 of the Code of Criminal Procedure provided:

“A preventive measure (including detention on remand) shall be immediately quashed or altered if the basis therefor has ceased to exist or new circumstances have arisen which justify quashing or replacing a given measure with a more or less severe one.”

29. Article 217 § 1 (2) and (4) (in the version applicable at the material time) provided:

“1. Detention on remand may be imposed if:

...

(2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the due course of proceedings by any other unlawful means;

...

(4) an accused has been charged with an offence which creates a serious danger to society.”

30. At the relevant time there was no specific provision governing detention on remand after the bill of indictment had been lodged with the competent court. Since 4 August 1996, the date of entry into force of the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes and under the present criminal legislation, the courts have been and are bound by the maximum statutory time-limits for which detention on remand can be imposed during the entire course of the proceedings. In particular, at the material time, there was no provision stating that the lodging of a bill of indictment automatically prolonged or replaced a previous detention order, or that this event itself resulted in detention which had originally been prolonged by a court for a fixed period at the investigation stage being continued either for an unlimited period or until a judgment at first instance was given. Nor was there any case-law to that effect. Nevertheless, according to domestic practice, once a bill of indictment had been lodged with the court competent to deal with the case,

detention was assumed to be prolonged pending trial without any further judicial decision being given.

31. It was as late as 6 February 1997 that the Supreme Court, referring to the historical background to the amended criminal legislation, mentioned the practice of keeping an accused in detention under the bill of indictment. It did so in a ruling on the interpretation of the Code of Criminal Procedure. That ruling did not, however, concern criminal legislation as it stood at the material time but related to the Code as amended with effect from 4 August 1996, when Article 222 (as amended) set out maximum time-limits for detention on remand not only at the investigation stage but at the whole pre-trial stage. In its resolution (no. I KZP 35/96) the Supreme Court replied – in the affirmative – to the question whether, after the lodging of a bill of indictment with the court competent to deal with the case, that court was obliged to give a decision prolonging detention on remand which had meanwhile exceeded the period fixed (or further prolonged) at the investigation stage. The relevant parts of the resolution read as follows:

“Under the provisions of the Code of Criminal Procedure which applied before [4 August 1996, when] the amendment of 29 June 1995 took effect, an obligation to determine the period of detention imposed by a prosecutor at the investigation stage was laid down in Article 211 § 2. However, it did not emerge explicitly from Article 222 §§ 1 and 2 (1) of the Code that, at the investigation stage, a prosecutor or the court competent to deal with the case had each time to determine the point until which detention should last. It was deemed to be obvious that, when prolonging detention at the investigation stage, both the prosecutor and the court competent to deal with the case had to determine the time until which detention was to last under a given decision. It was therefore assumed that the obligation to determine the period of detention arose if a decision on that matter was given before the expiry of the maximum statutory terms applicable at a given stage of the proceedings.

Comparing the old legislation with the present one leads [this Court] to the conclusion that the legislator, when amending the Code in June 1995, simply extended [the scope of] the rules applicable to continuing and prolonging detention on remand – which had previously applied only at the investigation stage – to the phase of court proceedings.

Before the amendment, the legislation was based on the precept that a suspect should not be detained indefinitely as long as his case was not being dealt with by an independent court. Now, the starting-point is that a suspect (and an accused) should not be detained indefinitely as long as a first-instance judgment is not rendered.

Under the previous legislation there was no need to determine the period of detention after a bill of indictment had been lodged with the court because at this point proceedings reached the phase in which there was no statutory time-limit [on this measure]. For this reason, the court concerned had no interest in [knowing] until when detention had been prolonged under the last decision[:] detention could continue because 'detention of limited duration' had become 'detention of unlimited duration'. There was therefore only a need to ascertain whether there were grounds for continuing detention under Article 213 of the Code.”

32. In its further resolution (no. I KZP 23/97) of 2 September 1997, the Supreme Court confirmed that:

“If the case, in which detention on remand had been ordered, has been referred to a court with a bill of indictment and the period of detention which had previously been fixed expires, the court has a duty to consider whether detention needs to be continued and to give an appropriate decision on this matter.”

Referring to the resolution of 6 February 1997, it also stressed that:

“... the *ratio legis* of the amendments to criminal legislation is based on the precept that a suspect (accused) should in no case be detained indefinitely until the first-instance judgment is rendered in his case ...

It should be noted that, from the point of view of procedural safeguards for an accused, what is material is not how long his detention at the investigation stage has lasted and how long it has lasted at the stage of the court proceedings, but the total period of his detention and whether his detention and its length are subject to review. If there is such a review at the investigation stage (Article 222 §§ 1 and 2), there is no reason why there should not be one at the stage of the court proceedings ...”

33. Articles 295 and 296 of the Code of Criminal Procedure of 1969, referring to the formal requirements for a bill of indictment, stipulated that it should contain the first name and surname of the accused and information as to whether a preventive measure had been imposed on him, a statement of the offence with which he had been charged, a detailed description of the facts of the case along with a statement of reasons for the charges, an indication of the court competent to deal with the case and evidence on which the charges were based.

34. Once the bill of indictment had been lodged with the court, the president of the court carried out preparations for the main trial.

Article 299 § 1 (6) of the Code of Criminal Procedure provided:

“1. The president of the court, *ex officio* or at the request of a party, shall refer the case to a court session if he finds that its resolution lies beyond his own competence, in particular:

...

(6) when there is a need to issue an order on a preventive measure.”

35. However, at the material time, according to the relevant domestic practice in respect of detention continuing after the last detention order had expired and after a bill of indictment had been lodged with a court, the courts did not make use of the procedure prescribed by the above-mentioned provision as it was presumed that the detention continued solely due to the fact that a bill of indictment had been lodged and, therefore, there was no need to issue a separate decision prolonging the detention.

36. Also, at the time, the Code set out three different legal avenues whereby a detainee could challenge the lawfulness of his detention: an appeal to a court against a detention order made by a prosecutor;

proceedings in which courts examined requests for prolongation of detention submitted by a prosecutor; and proceedings relating to a detainee's application for release.

37. As regards the last of these, Article 214 of the Code of Criminal Procedure (in the version applicable at the material time) stated:

“An accused may at any time apply to have a preventive measure quashed or altered.

Such an application shall be decided by the prosecutor or, after the bill of indictment has been lodged, by the court competent to deal with the case, within a period not exceeding three days.”

No provision of the Code stipulated that exceeding the time-limit laid down in that Article would have any legal consequence.

38. The interpretation of enforceable decisions in criminal proceedings was at the relevant time governed by the provisions of the Code of Execution of Criminal Sentences of 1969.

39. Article 14 of that Code provided:

“1. The authority executing a decision, as well as everyone whom such a decision concerns, may request the court which has dealt with the case to rule on any doubts concerning the execution of that decision or the calculation of the penalty imposed.

2. Everyone whom the decision on interpretation referred to in paragraph 1 concerns may appeal against such a decision.”

40. According to Article 205 of the Code of Execution of Criminal Sentences, provisions of the Code referring to a “convicted person” applied by analogy to a “detainee”. However, in the light of domestic practice and legal theory, it was considered doubtful whether Article 14 of the Code applied to cases in which a person detained on remand challenged the lawfulness of his detention since such a challenge was normally examined in the proceedings prescribed by the Code of Criminal Procedure (see paragraphs 36-37 above).

41. Proceedings relating to a request under Article 14 of the Code of Execution of Criminal Sentences were designed to obtain an interpretation of an enforceable decision which had not been formulated with adequate precision. The court which was called upon to interpret the decision in question was not competent to amend or supplement its operative part (see the decision of the Supreme Court (no. VI KRN 14/76) of 2 March 1976, OSNPG 1976/6/59). That being so, the person concerned could not obtain his release by lodging a request under Article 14 of the Code.

THE LAW

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

42. The applicant submitted that his detention on remand, in so far as it had been effected under the bill of indictment and after the expiry of the detention order of 30 December 1993, had not been “lawful” within the meaning of Article 5 § 1 of the Convention, the relevant part of which states:

“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;

...”

43. The applicant agreed in substance with the Commission's view that his detention had not been “lawful” since it had not been based on a “law” of adequate foreseeability but on a practice which had been entirely unsupported by any legislative provision or case-law, and had moreover arisen to fill a statutory lacuna. That practice could, therefore, neither replace or be equal to a “law”, nor fulfil the requirement of “foreseeability” of a “law” (see paragraph 63 of the Commission's report).

44. The applicant further argued that at the material time there had been no legal provision stating that the fact of lodging a bill of indictment had the effect of prolonging – indefinitely – detention ordered at the investigation stage. In his opinion, nothing had absolved the authorities from their duty to make an appropriate ruling on whether his detention should continue beyond the period fixed in the Łódź Regional Court's decision prolonging his detention until 31 January 1994.

45. On this point, the applicant asserted that Polish law had required the courts to apply Article 299 § 1 (6) of the Code of Criminal Procedure of 1969 and, therefore, the President of the Łódź Regional Court had been obliged under that provision to refer his case to the court session so that the applicant could obtain a decision on the lawfulness of his continued detention.

46. The Government did not deny that the applicant's detention, in so far as it had been continued under the bill of indictment, had not been based on any legal provision but on practice, a practice which they called “placing a

detainee at the disposal of a court". They agreed that at the material time it had indeed been a question of common practice, arising out of the absence of any precisely formulated provision, that, after the lodging of a bill of indictment with the court competent to deal with the case, that court had not been obliged to give, of its own motion, any further decision as to whether the period of detention fixed at the investigation stage should be prolonged.

47. The Government added, however, that the amendments to Polish criminal legislation, introduced by the Law of 29 June 1995 which came into force on 4 August 1996, had put an end to that practice. Following the Supreme Court's resolutions (see paragraphs 31-32 above) it had been replaced by the new practice of referring each case in which a detention order made at the investigation stage had expired to a court session for the purpose of making a fresh ruling on whether detention should continue.

48. The Government acknowledged that the applicant's detention had been continued after 31 January 1994 without an adequate judicial decision being given on the prolongation of this measure. In that context, they nevertheless stressed that such a situation had complied with the substantive and procedural provisions of Polish law and that the relevant provisions had been accessible to the applicant, sufficiently precise and foreseeable. The Government nevertheless conceded that those provisions had not been specific enough and thus had brought about the practice complained of.

49. Lastly, the Government stated that they abstained from making their own assessment of the lawfulness of the applicant's detention and asked the Court to rule on whether the practice in issue had been compatible with the requirements of Article 5 § 1 of the Convention.

50. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999, unreported).

51. However, the "lawfulness" of detention under domestic law is the primary but not always a decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see, among many other authorities, the *Winterwerp v. the Netherlands*

judgment of 24 October 1979, Series A no. 33, pp. 19-20, § 45, and the *Erkalo v. the Netherlands* judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2477, § 52).

52. On this last point, the Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see the *Steel and Others v. the United Kingdom* judgment of 23 September 1998, *Reports* 1998-VII, p. 2735, § 54).

53. Turning to the circumstances of the present case, the Court notes that the parties agree that between the date of expiry of the detention order of 30 December 1993 – namely 31 January 1994 – and the Łódź Regional Court's subsequent decision of 24 May 1994 on the applicant's release, there had been no judicial decision authorising the applicant's detention. It is also common ground that during this time the applicant was kept in detention solely on the basis of the fact that a bill of indictment had in the meantime been lodged with the court competent to deal with his case.

54. The Court observes that the domestic practice of keeping a person in detention under a bill of indictment was not based on any specific legislative provision or case-law but, as the Commission had found and the parties acknowledged before the Court, stemmed from the fact that Polish criminal legislation at the material time lacked clear rules governing the situation of a detainee in court proceedings, after the expiry of the term of his detention fixed in the last detention order made at the investigation stage.

55. Against this background, the Court considers, first, that the relevant Polish criminal legislation, by reason of the absence of any precise provisions laying down whether – and if so, under what conditions – detention ordered for a limited period at the investigation stage could properly be prolonged at the stage of the court proceedings, does not satisfy the test of “foreseeability” of a “law” for the purposes of Article 5 § 1 of the Convention.

56. Secondly, the Court considers that the practice which developed in response to the statutory lacuna, whereby a person is detained for an unlimited and unpredictable time and without his detention being based on a concrete legal provision or on any judicial decision is in itself contrary to the principle of legal certainty, a principle which is implied in the Convention and which constitutes one of the basic elements of the rule of law.

57. In that context the Court also stresses that, for the purposes of Article 5 § 1 of the Convention, detention which extends over a period of several months and which has not been ordered by a court or by a judge or any other person “authorised ... to exercise judicial power” cannot be considered “lawful” in the sense of that provision. While this requirement is not explicitly stipulated in Article 5 § 1, it can be inferred from Article 5 read as a whole, in particular the wording in paragraph 1 (c) (“for the purpose of bringing him before the competent legal authority”) and paragraph 3 (“shall be brought promptly before a judge or other officer authorised by law to exercise judicial power”). In addition, the habeas corpus guarantee contained in Article 5 § 4 further supports the view that detention which is prolonged beyond the initial period foreseen in paragraph 3 necessitates “judicial” intervention as a safeguard against arbitrariness. In the Court's opinion, the protection afforded by Article 5 § 1 against arbitrary deprivations of liberty would be seriously undermined if a person could be detained by executive order alone following a mere appearance before the judicial authorities referred to in paragraph 3 of Article 5.

58. In conclusion and on the facts of the present case, the Court considers that the applicant's detention was not “lawful” within the meaning of Article 5 § 1 of the Convention. Consequently, there has been a breach of that provision.

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

59. The applicant also complained that the Polish courts had failed to examine “speedily” the lawfulness of his detention under the bill of indictment in violation of Article 5 § 4 of the Convention, which states:

“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.”

60. The applicant firstly referred to his appeal of 7 January 1994, whereby he had contested the lawfulness of the prolongation of his detention under the order made by the Łódź Regional Court on 30 December 1993. He submitted that this appeal, after being – unjustifiably – considered to be an application for release and referred by the Court of Appeal to the court of first instance on 1 February 1994, had never subsequently been examined by the relevant courts. This failure resulted in the applicant's having been deprived of any opportunity to challenge that order.

61. The applicant maintained, secondly, that the manner in which the courts had dealt with his two further applications for release, dated 7 February and 28 March 1994 respectively, was incompatible with the

notion of “speediness” laid down in Article 5 § 4. He stressed that, under the terms of Article 214 of the Code of Criminal Procedure, the courts were obliged to give a ruling on his requests within a period not exceeding three days. Yet a period of nearly five months in respect of the first application and more than three months in respect of the second had elapsed before, on 5 July 1994, the courts reached the final decision on the lawfulness of his detention.

62. The applicant also submitted that the fact that he had asked the authorities to release him in view of his bad state of health could not be held against him since the principal reason for which those proceedings had lasted so long had been a lack of efficiency and coordination on the part of the authorities. This had been demonstrated, in particular, by their ineffective efforts to obtain medical evidence.

63. Finally, the applicant, as he had already done before the Commission, asserted that his right to have a speedy review of the lawfulness of his detention had been violated also on account of the excessive length of the proceedings instituted by him under Article 14 of the Code of Execution of Criminal Sentences. Those proceedings, instituted by his application of 16 February 1994, had come to an end as late as 21 December 1994, that is, after a lapse of more than ten months.

64. The Government considered that the “speediness” of the proceedings relating to the lawfulness of the applicant's detention was reasonable. Referring to the proceedings initiated by Mr Baranowski's applications for release, they considered that the need to obtain medical evidence concerning the state of the applicant's health had justified a certain delay in the proceedings.

65. They argued that the Łódź Regional Court had commenced the examination of the first request as early as the day after it had been submitted and that, subsequently, it had on five occasions adjourned the examination of the relevant applications because evidence from three experts had had to be taken. In addition, the court had been obliged, under Article 218 of the Code of Criminal Procedure, to establish whether the applicant's detention would not seriously jeopardise his life or health. These considerations had dictated that the applicant's health be examined with special diligence.

66. Referring to the applicant's appeal of 7 January 1994, the Government tacitly acknowledged that this appeal had not, as such, been examined by the authorities. They did, however, challenge the Commission's opinion on the question of when the appeal was “judicially determined”, submitting that the relevant date had not been 5 July 1994, as the Commission had found, but 24 May 1994, the date of the first-instance decision on the applications for release referred to above.

67. In conclusion, the Government invited the Court to hold, contrary to the Commission's finding, that in the present case there had been no violation of Article 5 § 4 of the Convention.

68. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see, for instance, *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

69. In the present case, the Court observes at the outset that the applicant, apart from advancing arguments concerning the conduct of the proceedings instituted by his appeal and requests for release, also attached importance to the proceedings which he had set in motion under Article 14 of the Code of Execution of Criminal Sentences. The Commission, in its report, did not express any opinion on this matter. Nor did the Government adduce any relevant arguments in their memorial. However the Court, noting that the only purpose of the proceedings in question was to obtain an interpretation of an enforceable decision given in criminal proceedings, not to secure release from detention, finds that these proceedings do not fall within the scope of Article 5 § 4 of the Convention.

70. The Court must next determine whether, in view of the duration of the proceedings relating to the applicant's requests for release and given the way in which his appeal of 7 January 1994 was handled, the applicant's right to obtain a "speedy" decision on the lawfulness of his detention was respected.

71. In that regard, the Court observes that the proceedings relating to the first application for release lasted from 7 February to 5 July 1994, that is approximately five months. The proceedings relating to the second started on 28 March 1994 and ran concurrently, lasting a little more than three months.

72. The Court accepts that the complexity of medical issues involved in an examination of an application for release can be a factor which may be taken into account when assessing compliance with the requirement of "speediness" laid down in Article 5 § 4. It does not mean, however, that the complexity of a medical dossier – even exceptional – absolves the national authorities from their essential obligations under this provision (see, *mutatis mutandis*, *Musiał*, *ibid.*, § 47).

73. In that context, the Court observes that it took the Łódź Regional Court some six weeks to obtain a report from a cardiologist and a further month to obtain evidence from a neurologist and a psychiatrist. Then the court needed yet another month to obtain other – unspecified – evidence (see paragraphs 16-18 above). Those rather lengthy intervals between the respective decisions to take evidence do not appear to be consistent with

“special diligence” in the conduct of the proceedings, referred to by the Government in their memorial. The Court is not, therefore, convinced by the Government's argument that the need to obtain medical evidence can explain the overall length of the proceedings. Accordingly, it finds that these proceedings were not conducted “speedily”, as required by Article 5 § 4.

74. Lastly, the Court has considered the issue of the applicant's appeal of 7 January 1994, which he had lodged against the order of 30 December 1993 and in which he had contested the lawfulness of the prolongation of his detention. It notes that it is undisputed that the authorities, of their own motion, deemed the appeal to be an application for release but never examined it either as such or under any other head. It further notes that the only point in issue is whether, and if so when, the appeal can be considered to have been judicially determined.

75. On this point the Court notes that in fact the applicant's appeal was not examined. However, in this respect it considers that all the issues concerning the lawfulness of the applicant's detention were, in effect, determined by the Łódź Court of Appeal in its decision of 5 July 1994. It is therefore of the view that this decision can be seen as having addressed the arguments made by the applicant in his appeal of 7 January 1994.

76. Consequently, the Court finds that, for the purposes of Article 5 § 4, the determination of the lawfulness of the prolongation of the applicant's detention until 31 January 1994 lasted from 7 January to 5 July 1994, that is, nearly six months. It considers that such a long delay, which resulted in the applicant's appeal being of no legal or practical effect, amounted to a denial of the applicant's right “to take proceedings by which the lawfulness of his detention shall be decided speedily”.

77. In conclusion, the Court holds that in the present case there has been a violation of Article 5 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed the sum of 8,000,000 zlotys (PLN) in compensation for both moral suffering and loss of earnings and opportunities caused by his detention.

80. The Government considered that the sum in question was exorbitant. They asked the Court to rule that a finding of a violation constituted sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

81. The Court considers that there is no causal link between the breaches established and the alleged pecuniary damage. Consequently, it sees no reason to award the applicant any sum under that head.

82. On the other hand, the Court finds that the applicant has certainly suffered non-pecuniary damage, a damage which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant PLN 30,000 under this head.

B. Costs and expenses

83. The applicant also claimed PLN 18,000 by way of legal costs and expenses incurred in connection with the proceedings before the Court.

84. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to the quantum.

85. Applying the criteria laid down in its case-law (see, for instance, *Öztürk v. Turkey* [GC], no. 22479/93, § 83, ECHR 1999-VI) and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant PLN 10,000 for his costs and expenses, together with any value-added tax that may be chargeable.

C. Default interest

86. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 21% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:

- (i) by way of compensation for non-pecuniary damage, PLN 30,000 (thirty thousand zlotys);
- (ii) for costs and expenses, PLN 10,000 (ten thousand zlotys) together with any value-added tax that may be chargeable;
- (b) that simple interest at an annual rate of 21% shall be payable on these sums from the expiry of the above-mentioned three months until settlement;

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

Done in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 March 2000.

Michael O'BOYLE
Registrar

Elisabeth PALM
President