



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

FIRST SECTION

CASE OF TRZASKA v. POLAND

(Application no. 25792/94)

JUDGMENT

STRASBOURG

11 July 2000

In the case of Trzaska v. Poland,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr L. FERRARI BRAVO,

Mr J. MAKARCZYK,

Mr R. TÜRMEŃ,

Mr B. ZUPANČIČ,

Mr R. MARUSTE, *judges*,

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

Having deliberated in private on 20 June 2000,

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

PROCEDURE

1. The case originated in an application (no. 25792/94) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Andrzej Trzaska ("the applicant").

2. The case was referred to the Court by the European Commission of Human Rights on 24 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Poland recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 §§ 3 and 4 and Article 6 § 1 of the Convention.

3. Before the Court the applicant, who was granted legal aid, was represented by Mr Z. Cichoń, a lawyer practising in Kraków. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

4. On 14 January 1999 the 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.

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

A. The particular circumstances of the case

7. On 27 June 1991 the Jastrzębie Zdrój District Prosecutor issued a warrant of arrest against the applicant who was suspected of attempted manslaughter, robbery and rape. He was arrested on the same day.

8. On 23 September 1991 the Katowice Regional Court (Sąd Wojewódzki) prolonged the detention on remand until 30 November 1991 finding a reasonable suspicion that the applicant had committed the crimes in question. The Court considered that certain witnesses had to be heard and that expert opinions should be taken.

9. On 29 November 1991 the Katowice Regional Prosecutor transmitted the bill of indictment to the Katowice Regional Court. The applicant was charged with attempted manslaughter, assault, causing severe bodily harm, use of a dangerous weapon, aggravated theft, rape and theft.

10. On 14 January 1992 the applicant requested the Katowice Regional Court to release him. On 20 January 1992 the Court refused to order the applicant's release in view of the seriousness of the offences concerned.

11. On 4 March 1992 the first hearing was held before the Katowice Regional Court. The applicant requested that the case be transmitted to the Jelenia Góra Regional Court as most witnesses lived nearby. He requested access to the case-file in order to read it in a detailed manner. The Court refused the first request and complied with the second.

12. On 2 April 1992 the applicant failed to appear before the Court. It transpires from the minutes of the hearing that he had refused to leave the prison cell as he felt unwell. A prison physician stated that there were no medical objections to the applicant's participation in the hearing. The hearing set for 20 May 1992 was not held for the same reason.

13. On 30 June 1992 the Court heard the applicant, who denied his involvement in the crimes concerned, and another accused. The hearing was adjourned for 24 September 1992. At this date the court heard four witnesses and further questioned the applicant. On 25 September 1992 five further witnesses were heard. The hearing was adjourned until 18 November 1992.

14. Subsequently the judge rapporteur fell ill. He remained on sick leave from 10 November 1992 to 31 August 1994. The case was assigned to a new panel of judges.

15. On 16 April 1993 the applicant complained to the Minister of Justice about the length of the proceedings.

16. The hearing fixed on 18 June 1993 was adjourned as the applicant's officially appointed counsel requested that the case be assigned to another lawyer in view of his bad health.

17. On 2 August 1993 the hearing was recommenced in view of the change in the composition of the court. The court questioned the applicant and another co-accused. The hearing was adjourned for 8 and 14 September 1993.

18. On 5 August 1993 the officially appointed lawyer informed the court that the applicant had withdrawn his power of attorney. At the hearing set for 8 September 1993 this lawyer was not present. The Court adjourned the hearing until 14 September 1993 and assigned two new lawyers for the applicant's defence. As they failed to appear at the hearing on 14 September 1993, the Court adjourned the hearing until 4 October 1993.

19. On 4 October 1993 one of the officially appointed lawyers requested that the hearing be recommenced. The Court complied with this request and again questioned the applicant and another co-accused.

20. On 3 November 1993 the applicant complained to the Ombudsman (Rzecznik Praw Obywatelskich) about the length of the proceedings in his case and on 18 November 1993 to the Minister of Justice.

21. At the hearing on 19 and 22 November 1993 the court heard sixteen witnesses. At the hearing on 7 January 1994 only two out of fifteen witnesses who were to be heard on that day complied with the summonses. The Court imposed fines on some of them.

22. On 15 December 1993 the President of the Katowice Regional Court requested the President of the Criminal Division of that Court to follow closely the progress in the case and to prepare each month a progress report, with a first date set for 7 January 1994.

23. By a letter of 7 February 1994 the applicant requested the court to recall two of the counsel assigned to his case under the legal aid scheme and to assign the case to the lawyer who had been representing him at the beginning of the proceedings. On 21 February 1994 the court refused, having noted that the first officially appointed counsel had fallen ill; subsequently the applicant had withdrawn the power of attorney of the second counsel; and the third counsel had retired. The court further pointed out that granting the applicant's request would have resulted in a fifth lawyer financed by the legal aid scheme representing the applicant in the proceedings.

24. On 23 February 1994 three witnesses were heard. On 28 February 1994 the hearing was adjourned as the president of the court fell ill.

25. On 14 March 1994 the President of the Katowice Regional Court reiterated his request to the President of the Criminal Division to supervise the proceedings and to present a first report on the progress by 10 May 1994.

26. On 30 March 1994 the Ombudsman requested the President of the Katowice Regional Court to inform him about the progress in the case.

27. At a hearing on 23 May 1994 five witnesses out of eighteen summoned for that date complied with the summonses. The applicant requested to be released. The court, having heard the prosecutor's argument in reply, refused to release him in view of the seriousness of the crimes he was charged with. The court further considered that there was the risk of collusion. On 25 May 1994 the applicant lodged an appeal against this decision with the Katowice Court of Appeal. On 1 June 1994 the Katowice Court of Appeal upheld the contested decision. The Court observed that the applicant was suspected of serious crimes and that there was a risk of collusion. The Court noted that there was progress in the case as hearings were being held. Thus, even regard being had to the fact that the applicant had been detained on remand for three years, there were no reasons which would justify his release.

28. On 5 June 1994 the applicant again requested that his counsel be changed.

29. On 7 June 1994 the Ombudsman again requested the President to inform him about the progress in the case and to indicate whether there were still grounds for detention on remand.

30. On 20 June 1994 the Regional Court ordered that accused Z.P. be released in view of his poor health.

31. On 28 June 1994 the applicant requested his release, relying on his rights guaranteed by the European Convention on Human Rights.

32. On 4 July 1994 the Katowice Regional Court refused to release the applicant. The Court noted that the applicant was suspected of dangerous crimes. It also considered that there was a risk of collusion and that, if released, the applicant would jeopardise the criminal proceedings by trying to bear pressure on witnesses and by contacting another co-accused who was not detained.

33. On 16 July 1994 the applicant complained to the Minister of Justice about the length of the proceedings.

34. From June to September 1994 the Court composed a list of the addresses of witnesses who had failed to appear on 23 May 1994. In particular, the court had to establish the address of the rape victim.

35. On 11 October 1994 three witnesses out of the eighteen summoned for that date complied with the summonses. The applicant requested a medical examination in view of his gastrological problems. The court ordered the medical services of the Krakow Detention Centre to submit a medical opinion as to their gravity. Another co-accused, who had been released on 23 June 1994 in view of his ill-health, failed to appear.

36. On 28 October 1994 the applicant refused to leave the prison cell. A medical opinion of 14 November 1994 stated that he suffered from chronic gastritis, but could be treated in the prison.

37. In a letter of 10 November 1994 the applicant challenged the judges. He referred to the fact that on 11 October 1994 the court had ordered the police to force him to leave his cell in order to attend the hearing. On 12 December 1994 the Katowice Regional Court refused to comply with this request.

38. At the hearing on 10 January 1995 two out of ten witnesses appeared before the court. On 31 January 1995 three witnesses were heard. On 7 February 1995 the applicant refused to leave the prison cell, declaring that he felt unwell and he had not received the summons. The court adjourned the hearing in order for a physician to establish whether the applicant's condition prevented him from attending the hearing. Having examined the applicant, the physician stated that there were no medical objections to the applicant's participation in the hearing.

39. Further hearings were held on 7 March and 22 March 1995. On 22 March 1995 the Court convicted the applicant of attempted manslaughter, rape and aggravated theft and sentenced him to twenty-five years' imprisonment.

40. On 19 October 1995, following the applicant's appeal, the Katowice Court of Appeal in part quashed the first-instance judgment and ordered that the case be reconsidered. On 27 May 1997 the Katowice Regional Court again convicted the applicant and imposed a sentence of twenty-five years' imprisonment.

II. RELEVANT DOMESTIC LAW

41. The Polish Code of Criminal Procedure, enacted in 1969 applicable at the material time, listed as so-called "preventive measures", *inter alia*, detention on remand, bail and police supervision. The authorities competent to decide on detention on remand were provided for in Articles 210 and 212 of the Code, which read as follows:

Article 210:

"1. Preventive measures [i.e. detention on remand, bail and police supervision] shall be imposed by the court; before a bill of indictment is lodged with the court, they shall be ordered by the prosecutor (...)."

Article 212:

"1. A decision concerning preventive measures may be appealed [to a higher court]
....

2. A prosecutor's order on detention on remand may be appealed to the court competent to deal with the merits of the case...."

42. The Code did not set out any statutory time-limits concerning the length of detention on remand in criminal proceedings. Nevertheless, pursuant to Article 222 of the Code, a prosecutor was empowered to order detention on remand for a period not exceeding three months. According to that Article, in cases when, in view of the particular circumstances of the case, the investigation could not be completed within three months, detention on remand could, if necessary, be prolonged by either the court competent to deal with the merits of the case, for a period not exceeding one year, or, by the Supreme Court, at the request of Prosecutor General, for such further fixed period as required to terminate the investigations.

43. The courts, when ruling on the prosecutor's request submitted in pursuance of Article 222 of the Code, were under an obligation to determine the period for which detention could be prolonged. If the court refused to grant the prosecutor's request for prolongation of detention or if the prosecutor had failed to submit a request for such prolongation before or on the expiry of the last detention order, the detained person had to be released.

44. Article 213 of the Code provided that a preventive measure should be immediately quashed or altered if the basis therefor had ceased to exist or if new circumstances had arisen which justified quashing or replacing a given measure with a more or less lenient one.

45. Under Article 217 § 1 (2) and (4) of the Code, detention on remand could be imposed if there was a reasonable risk that an accused would attempt to induce witnesses to give false testimony or to obstruct the due course of the proceedings by any other unlawful means, or if the accused had been charged with an offence posing a serious danger to society.

46. Under the provisions of the 1969 Code there were three different legal avenues whereby a detained person could challenge the lawfulness of his or her detention and thus possibly obtain release. Under Article 212. § 2 of the Code of Criminal Procedure he could appeal to a court against a detention order given by a prosecutor (see § 41 above). Under Article 222 §§ 2(1) and 3 he could lodge an appeal against a further decision by that court prolonging his detention at a prosecutor's request. Finally, Article 214 of the Code stated that an accused could at any time apply to the authority conducting the criminal proceedings, i.e. the prosecutor or the court, depending on the stage the proceedings had reached, to have a preventive measure quashed or altered.

47. Imposition and prolongation of preventive measures, including detention on remand, were examined by the courts in proceedings held *in camera*. The presence of the parties at court sessions other than hearings, including sessions held in proceedings concerning review of detention on remand, was regulated in Articles 87 and 88 of the Code of Criminal Procedure, which, insofar as relevant, provided:

Article 87:

"The court pronounces its decisions at a hearing if the law provides for it; and otherwise, at a court session held in camera. ..."

Article 88:

"A court session in camera may be attended by a prosecutor (...); other parties may attend if the law provides for it."

48. A new Code of Criminal Procedure was enacted by the Sejm (Parliament) on 6 June 1997. It entered into force on 1 September 1998. Pursuant to Article 249 of the new Code, before deciding on the application of the preventive measures, the court shall hear the person charged with offence. The lawyer of the detainee should be allowed to attend in the court session, if he or she is present. It is not mandatory to inform the lawyer of the date and time of the court session, unless the suspect so requests and if it will not hinder the proceedings.

49. The court shall inform the lawyer of a detained person of the date and time of court sessions at which a decision is to be taken concerning prolongation of detention on remand, or an appeal against a decision to impose or to prolong detention on remand is to be considered.

PROCEEDINGS BEFORE THE COMMISSION

50. The applicant lodged his application with the Commission on 11 April 1994, alleging a violation of Article 5 § 3, Article 5 § 4 and Article 6 § 1 of the Convention.

51. The Commission declared the application partly admissible on 6 September 1995. In its report of 19 May 1998 (former Article 31 of the Convention), it expressed the opinion, by thirty votes to one, that there had been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention; unanimously, that there had been a violation of Article 5 § 4 of the Convention in that the proceedings concerning review of his detention on remand had not been truly adversarial, and, by 26 votes to 5, that there had been a violation of Article 6 § 1 of the Convention in view of the unreasonable length of the proceedings.

THE LAW

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

52. The applicant complained that the unreasonable length of his detention on remand was in breach of Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

53. The Government contested this argument.

A. Period to be taken into consideration

54. The Court notes that the period which falls to be examined under Article 5 § 3 of the Convention began not on 27 June 1991, the date on which the applicant was remanded in custody, but on 1 May 1993, when Poland’s declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect. However, when determining whether the applicant’s continued detention after that date was justified in the light of Article 5 § 3, the fact that by 1 May 1993 the applicant had already been kept in custody for one year, ten months and three days must be taken into account (see the *Yagci and Sargin v. Turkey* judgment of 8 June 1995, Series A no. 319-A, p. 18, § 49).

55. As regards the end of the relevant period, the Court recalls that in principle conviction by a court marks the end of the period to be considered under Article 5 § 3; from that point on, the detention of the person concerned falls within the scope of Article 5 § 1 (a) of the Convention (see the *B. v. Austria* judgment of 28 March 1990, Series A no. 175, p.14, § 36).

56. In the present case the applicant was first convicted of attempted manslaughter and rape and sentenced to twenty-five years’ imprisonment by a judgment of the Katowice Regional Court of 22 March 1995. Subsequently, following his appeal, his conviction was quashed by a judgment of the Court of Appeal given on 19 October 1995. During the period following the former date, he was obviously detained “after conviction by a competent court”, not “for the purpose of bringing him before the competent legal authority”. Hence, notwithstanding the retrospective effect under Polish law of a judgment which quashed his conviction, this period must be deducted from the period to be considered under Article 5 § 3 of the Convention (see the *I.A. v. France* judgment of

23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2976, § 98). Subsequently, on 27 May 1997 the Katowice Regional Court, having reconsidered the case, again convicted the applicant and sentenced him to twenty-five years' imprisonment.

57. The Court therefore considers that the period under examination lasted three years and six months.

B. Whether the length of detention was reasonable

I. Arguments before the Court

58. The applicant submitted that the breach of his right to be brought to trial within a reasonable time had resulted essentially from the fact that the provisions of criminal procedure applicable at the material time were incompatible with the requirements of Article 5 § 3 of the Convention. Under Article 217 of the Code of Criminal Procedure, the dangerous character of the offence had constituted ground justifying detention on remand, whereas in the light of the Convention this reason could not be deemed sufficient for imposition of detention on remand. The applicant's detention had lasted over three years, notwithstanding the fact that the case was not complex and despite his repeated applications for release, submitted not only to the courts, but also to the Ombudsman and the Minister of Justice.

59. The applicant further subscribed to the conclusions of the Commission.

60. The Government emphasised that the applicant had been charged and ultimately convicted of serious offences. The fact that he had committed them almost immediately after his release from prison on 5 June 1991, justified a reasonable fear of the authorities conducting the proceedings that, in the event of his release, he would commit new offences. Although this ground for detention had not been expressly mentioned in any of the decisions of the competent authorities, it undoubtedly justified the applicant's continued detention.

61. The Katowice Regional Court in its refusal to release the applicant, given on 4 July 1994, had found that there had been a risk of collusion since one of the accused had been released, and the applicant, if released, could resort to collusion. There had also been a risk of pressure being brought to bear on witnesses.

62. The Government concluded that the length of applicant's detention was compatible with the requirements of Article 5 § 3 of the Convention.

II. The Court's assessment

(a) Principles established by the Court's case-law

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

The persistence of reasonable suspicion that the person arrested has committed an offence – a point which was not contested in the present case – is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see, among other authorities, the *I.A. v. France* judgment of 23 September 1998, *loc. cit.*, p. 2978, § 102).

(b) Application to the present case

64. It appears from the documents on the domestic proceedings at the Court's disposal that during the period under consideration the Polish courts examined the applicant's pre-trial detention on 23 May 1994 and on 4 July 1994, and, following his appeal, on 1 June 1994. In the decisions of 23 May 1994, and of 1 June 1994, the courts relied on the serious character of the offences with which the applicant had been charged. In its decision of 4 July 1994, the Katowice Regional Court likewise noted that the applicant had been charged with serious crimes. In its decision of 23 May 1994 the court referred to the risk of collusion. In its decision of 1 June 1994 the court further considered that the fact that the applicant had remained in detention for three years could not in itself justify his release, given that the proceedings had been progressing.

65. As regards the risk of collusion, the Court considers that no concrete factual circumstances were relied on by the courts in this respect, other than, in the decision of 4 July 1994, that one of the co-accused had been released.

66. The Court notes the Government's argument that the authorities must have relied on the risk that, if released, the applicant could re-offend. However, in view of the fact that this risk, as the Government acknowledge,

was not expressly referred to in any of the decisions of the domestic authorities, the Court finds it difficult to accept that this ground can be invoked as constituting a relevant and sufficient ground for a protracted detention on remand in the present case.

67. The Court has considered whether the authorities, when examining the case, showed the diligence required in cases in which the accused is detained. It is first to be noted in this respect that the hearings in the case commenced first in March 1992. Later, in November 1992 the judge rapporteur fell ill and, consequently, the composition of the court had to be changed. It is noteworthy that the hearings were recommenced only in August 1993, i.e. after nine months, and the proceedings remained at a standstill throughout this time.

68. The Court further notes that on several occasions only a small number of witnesses attended the hearings to which they had been summoned, but it was only on one occasion, on 7 January 1994, that the courts reacted thereto and imposed a fine on certain witnesses. There was a five months period of inactivity between hearings held on 23 May 1994 and 11 October 1994.

69. In conclusion, through its protracted length the detention in issue breached Article 5 § 3 of the Convention.

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

70. The applicant complained that the proceedings concerning review of the lawfulness of his detention on remand were not truly adversarial, in breach of Article 5 § 4 of the Convention, which reads:

“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.

71. The applicant submitted that the applicable provisions of Polish law as it stood at the material time were incompatible with the standards of the European Convention of Human Rights. According to these provisions, detention on remand was imposed by a prosecutor who was not a judicial authority. Moreover, the Code of Criminal Procedure had not entitled either a detained person or his lawyer to attend the court session at which the court examined whether the pre-trial detention was lawful and justified. At the same time, the prosecutor was entitled to attend such sessions. This should be deemed as a breach of the principle of equality of arms of the parties to the criminal proceedings.

These provisions were finally repealed on the ground of their incompatibility with the Convention, which, in the applicant's contention, supports the conclusion that Article 5 § 4 was breached in the present case.

72. In the applicant's case the courts had been deciding on the applicant's detention in his absence and that of his lawyer. Consequently, they did not have an opportunity to take a position in respect of the arguments on which the prosecutor relied before the court in support of the applicant's detention. The court, not having had a personal contact with the accused, did not have an opportunity to assess properly whether his detention was and remained justified.

73. The Government submitted that after 1 May 1993 the applicants had submitted two applications for release, on 23 May 1994 and on 28 June 1994. The first request had been submitted to the Katowice Regional Court during the hearing held on that date in the presence of the parties, i.e. the applicant, his lawyer and the prosecutor. Thus, the applicant had had an opportunity to present to the court his arguments against his continued detention in adversarial proceedings ensuring full equality of arms.

The Government referred to the Commission's opinion according to which "the personal appearance of the detainee before the court, at least once in the course of proceedings concerning review of his detention on remand, would have given the court a better opportunity, in the light of the applicant's personality and attitude, whether his detention was justified". The Government emphasised that this requirement had been satisfied in the present case and that it had been open to the applicant to request the court to order his release at each subsequent hearing held in the criminal proceedings against him.

74. The Court recalls that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the 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 the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 154-B, p. 34, § 65). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation (see the *Megyeri v. Germany* judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22), it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see the *Kampanis v. Greece* judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47; *Nikolova v. Bulgaria* [G.C.], no. 31195/96, § 58).

75. The Court first observes that in the case under consideration the applicant was remanded in custody under the warrant of arrest of 27 June 1991, given by the Jastrzębie Zdrój District Prosecutor. Further, on 20 January 1992 the Katowice Regional Court, having examined his request for release of 14 January 1992, refused to allow it. Subsequently, on

23 May 1994 the applicant, during the hearing held in the trial on the merits of the case, unsuccessfully requested to be released. The applicant's appeal against this refusal was later dismissed by the decision of the Court of Appeal of 1 June 1994. Subsequently, on 28 June 1994 the Katowice Regional Court dismissed the applicant's new request for release.

76. It is not in dispute in the present case that under domestic law, as it stood at the relevant time, it was open for the accused person detained on remand to submit a request for release to the court conducting the criminal proceedings at a hearing on the merits of the case. The court would then hear the arguments of the accused and his counsel and of the prosecutor, and decide whether in the light of their submissions the continued detention remained lawful and justified. The applicant submitted such a request at the hearing held before the Katowice Regional Court on 23 May 1994.

77. However, it must be noted that this hearing was held after the applicant had been detained for a period of two years and ten months, of which one year and twenty-three days after 1 May 1993, the date on which the Court became competent to examine individual petitions against Poland. The Court considers that the Regional Court carried out a review of the lawfulness of the applicant's detention in a manner which respected the principle of equality of arms. However, after such a protracted period of detention, it cannot be said that the review was carried out speedily as required by Article 5 § 4 of the Convention.

78. The Court further notes that the applicant's detention on remand was also reviewed in other types of proceedings, referred to above. However, it observes that the law on criminal procedure, as it stood at the relevant time, did not entitle either the applicant himself or his lawyer to attend the court session held in proceedings concerning review of his detention in any other context than within the framework of the hearing on the merits of the case. Moreover, the applicable provisions did not require that the prosecutor's submissions in support of the applicant's detention be communicated either to the applicant or to his lawyer. Consequently, the applicant did not have an opportunity to comment on those arguments in order to contest the reasons invoked by the prosecuting authorities to justify his detention. The Court finally notes that it was open for the prosecutor to be present at any of the court sessions in which the court examined the lawfulness of the applicant's detention, if he or she chose to be so present.

79. In conclusion, in the light of the above considerations, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

80. The applicant further complained of the length of the criminal proceedings against him. He relied on Article 6 § 1 of the Convention, which provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

81. The Government contested this view.

A. Period to be taken into consideration

82. The proceedings began on 27 June 1991 when the applicant was arrested, and ended on 18 June 1997, when the judgment of the Katowice Regional Court of 27 May 1997 became final and enforceable. However, having regard to its above conclusion in respect of its temporal competence, the Court can only consider the period of four years, one month and eighteen days which elapsed after 1 May 1993, the date on which Poland's declaration recognising the Court's competence to examine individual petitions became effective. In order to assess the reasonableness of the period under examination, the Court will have regard to the stage reached in the proceedings on 1 May 1993 and to the fact that by that date the proceedings against the applicant had already lasted for one year, ten months and three days (see, among other authorities, *Humen v. Poland*, no. 26614/95, § 59).

B. Reasonableness of the length of the proceedings

83. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, which in this instance call for an overall assessment (see, among other authorities, the *Cesarini v. Italy* judgment of 12 October 1992, Series A no. 245-B, p. 26, § 17).

84. The applicant submitted that as a result of the protracted character of the proceedings his right to have his case tried within a reasonable time had been breached.

85. The Government first argued that the case had to be regarded as complex since it concerned seven charges of violent crimes committed by the applicant in concert with other co-accused. The prosecuting authorities had requested the court to hear thirty-nine witnesses. The records of the case had numbered 2102 pages and the court had admitted voluminous expert evidence, including medico-psychological reports on the applicant.

86. As to the conduct of the applicant, the Government were of the view that he had contributed to the length of proceedings by refusing on three occasions, on 2 April 1992, 20 May 1992 and 28 October 1994, to leave his cell in order to attend hearings. Further, the applicant, by submitting on 10 November 1994 the manifestly unfounded challenge of the judge, which

had later been dismissed on 12 December 1994, prolonged the proceedings by one month and two days.

The Government emphasised that the applicant had requested that his officially appointed lawyers be changed. On 3 August 1993 the court had been informed that the applicant had withdrawn his power of attorney to his officially appointed lawyer. Accordingly, this lawyer had not attended the hearing on 8 September 1993, which had had to be adjourned until 14 September 1993 with a view of assigning new lawyers to the case. As they had failed to attend the hearing on that date, it had further been adjourned until 4 October 1993. On that date the applicant's lawyer requested that the hearing be recommenced and the court granted this request. Consequently, the applicant's request to have his lawyer replaced prolonged the proceedings for two months and two days.

87. The Government finally argued that the authorities had examined the applicant's case with due diligence. The hearings in the case had been held at regular intervals. The delay from 10 November 1992 to 18 June 1993 was caused by the illness of the judge rapporteur. The Government emphasised that the right of the accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the judicial authorities to carry out their tasks with proper care (the *Toth v. Austria* judgment of 12 December 1991, Series A no. 224, p. 21, § 77).

88. The Court acknowledges that the case disclosed a certain complexity, as shown by the voluminous character of the case-file referred to by the Government. However, in the Court's opinion there are no grounds on which to hold that the case had been particularly complex.

89. As regards the conduct of the applicant, the Court first notes that it was at his request that the trial, which had re-commenced on 2 August 1993 following the change in the composition of the court, began again on 4 October 1993. This prolonged the proceedings for two months and two days. It further notes that on 10 November 1994 the applicant lodged a request for a judge to step down, which was dismissed on 12 December 1994 as lacking any basis. The Court also notes the Government's argument that on three occasions the applicant had refused to attend hearings which, as a result, had to be adjourned, without there being any evidence to show that his refusal was justified on medical grounds. The applicant has thus contributed to the length of proceedings.

90. As regards the conduct of the authorities, the Court's attention has been drawn to the fact that during the trial numerous witnesses failed to comply with the summonses to attend the hearings. On 7 January 1994 only two out of fifteen witnesses complied with the summonses. On 23 May 1994 five witnesses out of eighteen summoned for that date attended the hearing. On 11 October 1994 three witnesses out of eighteen, who were to be questioned at that day, appeared before the court. However, it was only

once that the court availed itself of the means it had at its disposal in order to sanction the witnesses, by imposing fines on some on them.

91. The Court notes that it took the courts three months, from June to September 1994, to establish addresses of numerous witnesses who had failed to comply with the summonses for the hearing held on 23 May 1994. It considers that it cannot be ruled out that the difficulties in serving the summonses to the exact addresses of the persons to be questioned as witnesses had been caused by the fact that by that time the proceedings had already been pending for almost three years. Furthermore, it is noted, in respect of the conduct of the authorities, that the composition of the Katowice Regional Court changed as a result of the presiding judge's illness and that the case remained at a standstill from 25 September 1992 to 18 June 1993.

92. The Court finally notes that the domestic authorities, i.e. the President of the Katowice Regional Court and the Ombudsman had on three occasions, by letters of 15 December 1993, of 14 March 1994 and of 7 June 1994, acknowledged the significant length of proceedings in the case.

93. Making an overall assessment, the Court considers that the length of the criminal proceedings in question contravened Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed a sum of PLN 90,000 as a compensation for both pecuniary and non-pecuniary damage, which he suffered as a result of his detention.

96. The Government asked the Court to rule that a finding a violation constituted sufficient just satisfaction. In the alternative, they asked 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, such as purchasing power of national currency and to current minimum gross salary in Poland.

97. The Court considers that, in the circumstances of the case, the finding of a violation constitutes in itself a sufficient just satisfaction for any damage sustained by the applicant.

B. Costs and expenses

98. The applicant claimed PLN 21,000 by way of legal costs and expenses incurred in the proceedings before the Convention organs, minus the sums paid to the applicant in legal aid awarded by the Council of Europe.

99. The Government requested the Court to decide on award of legal costs and expenses insofar as they had been actually and necessarily incurred and reasonable as to quantum. They relied in this respect on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 35, § 36).

100. The Court, deciding on an equitable basis, awards the applicant the sum of PLN 6,000 together with any VAT that may be payable.

C. Default interest

101. 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 § 3 of the Convention;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that the present judgment constitutes in itself sufficient just satisfaction in respect of any damage sustained by the applicant;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, for costs and expenses, 6,000 (six thousand) Polish 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 this sum from the expiry of the above-mentioned three months until settlement;
6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 11 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President