



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

FOURTH SECTION

CASE OF IŁOWIECKI v. POLAND

(Application no. 27504/95)

JUDGMENT

STRASBOURG

4 October 2001

FINAL

04/01/2002

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 *Howiecki v. Poland*,

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

Mr G. RESS, *President*,

Mr A. PASTOR RIDRUEJO,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 23 March 2000 and on 13 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 27504/95) 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, Wojciech Łowiecki (“the applicant”), on 3 November 1994.

2. The applicant, who had been granted legal aid, was represented by Mr A. Redelbach, a lawyer practising in Poznań, Poland. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki of the Ministry of Foreign Affairs.

3. The applicant alleged that the length of his detention on remand had exceeded a “reasonable time”, that the Polish courts had not examined “speedily” his applications for release and that his trial had been inordinately lengthy.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11). It was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. By a decision of 23 March 2000 the Chamber declared the application admissible.

6. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 1 October 1993 the Poznań-Nowe Miasto District Prosecutor (*Prokurator Rejonowy*), on the basis of evidence obtained by the Warsaw Police Headquarters (*Komenda Stołeczna Policji*) from the Interpol Office in London, opened an investigation against persons unknown into the circumstances of an attempt to obtain a loan of 25,000,000 US dollars (USD) by false pretences. On 5 November 1993 the prosecutor laid charges against two persons of having attempted to forge bank guarantees and fraudulently to seize public property.

8. A day later, on 6 November 1993, the Poznań-Nowe Miasto District Prosecutor charged the applicant with forgery and attempting to obtain a loan of USD 25,000,000 by false pretences, committed together with four other persons, and detained him on remand on the reasonable suspicion that he had committed the offences with which he had been charged.

9. Subsequently, on 8 November 1993, the Poznań Regional Prosecutor (*Prokurator Wojewódzki*) took over the investigation from the Poznań-Nowe Miasto District Prosecutor.

10. On 10 and 15 November 1993 respectively, both the applicant and his defence counsel appealed against the detention order of 6 November 1993. The other suspects lodged similar appeals at about the same time. On 13 December 1993 the Poznań Regional Court (*Sąd Wojewódzki*) upheld all the detention orders.

11. On 10 and 14 January 1994 the investigating prosecutor ordered that evidence be obtained from an expert in graphology, an expert in financial and banking matters, as well as from a psychiatrist and a psychologist. On 12 January 1994 the prosecutor issued a letter of request to the German authorities, asking them to hear evidence from certain witnesses residing in Germany.

12. On 12 January 1994, at the applicant's request, the Regional Prosecutor presented, in writing, detailed reasons for the charges laid against him. The prosecutor maintained, in particular, that those charges were based on abundant evidence, in particular in the form of bank documents and testimonies of the applicant's co-suspects. In consequence and in the light of the material collected at this stage, the prosecution

considered that there was a reasonable suspicion that the applicant and his co-suspects had forged thirty provisional bank guarantees and fifty final bank guarantees in order to obtain a loan of USD 25,000,000.

13. On 20 January 1994 the Poznań Regional Prosecutor ordered that the charges laid against the applicant in other criminal proceedings instituted against him by the Inowrocław District Prosecutor be joined in the same criminal proceedings and, accordingly, referred the latter case to the investigating prosecutor.

14. On 31 January 1994, on an application by the Poznań Regional Prosecutor, the Poznań Regional Court prolonged the applicant's and his co-suspects' detention until 4 May 1994. On 15 March 1994, ruling on the applicant's appeal, the Poznań Court of Appeal (*Sąd Apelacyjny*) upheld the first-instance decision.

15. In the meantime, on 14 March 1994, the applicant had asked the Poznań Regional Prosecutor to release him or to vary the measure imposed on him by replacing detention by bail or police supervision. That application was rejected on 30 March 1994.

16. On 4 April 1994 the applicant asked the Poznań Regional Prosecutor to release him on bail. He asserted that his detention was putting a severe strain on his family. In particular, his minor daughter had recently been examined by psychiatrists and it had been found that the separation from her father had seriously affected her mental state. He also submitted that his daughter was suffering from dyslexia and that her mental state had been rapidly worsening during last months. The relevant facts were confirmed by a report made by a psychologist on 5 April 1994. Furthermore, the applicant stressed that there was no risk of his absconding and that the proper conduct of the proceedings could be secured by bail. On 22 April 1994 the application was dismissed.

17. On 25 April 1994, ruling on an application made by the Poznań Regional Prosecutor, the Poznań Regional Court prolonged the applicant's detention until 4 July 1994. The applicant and his defence counsel appealed against this decision on 3 and 4 May 1994 respectively. The Poznań Court of Appeal dismissed their appeals on an unknown date.

18. On 15 May 1994 the applicant lodged a further application for release with the Poznań Regional Prosecutor. It was dismissed on 24 May 1994. The relevant decision was upheld on appeal on 15 June 1994.

19. On 10 June 1994 the applicant's defence counsel applied to the Regional Prosecutor to have the applicant released in view of the fact that his wife was ill and was to be admitted to hospital. He submitted a medical certificate. On 16 June the prosecutor ordered that evidence be obtained from a medical expert in order to define the nature of the wife's illness and to confirm whether her state of health required treatment in hospital.

20. Later, on 21 June and 19 July 1994, the applicant again asked the prosecutor to release him on bail. He maintained that on account of his long-

lasting separation from his family both his daughter and wife were suffering from serious neurosis and depression.

21. Meanwhile, on 27 June 1994, ruling on an application made by the Poznań Regional Prosecutor on an unknown date in June, the Poznań Regional Court had prolonged the applicant's detention until 31 October 1994. On 11 August 1994 the Poznań Court of Appeal, on the applicant's appeal, upheld that decision in view of the reasonable suspicion that the applicant had committed the offences in question and of their serious nature.

22. On 7 July 1994 the Poznań Regional Prosecutor had completed the investigation. On 8 July 1994 he lodged a bill of indictment with the Poznań Regional Court. The applicant's applications for release of 10 and 21 June and of 19 July 1994 were referred to that court together with the case-file.

23. On 7 September 1994 a medical expert submitted a report stating that the applicant's wife was suffering from neurasthenia resulting from her family situation. On 19 September 1994 the Poznań Regional Court, after considering that report, dismissed all the three above-mentioned applications, holding that the applicant's detention should continue. The court based its decision on the fact that there was a reasonable suspicion that he had committed the offences with which he had been charged and the serious nature of those offences. It also found that the applicant's family situation did not militate against his continuing detention and that there were no grounds on which to release the applicant, as defined in Article 218 of the Code of Criminal Procedure.

24. The applicant appealed on 27 September 1994, submitting, among other things, that the mere suspicion that he had committed the offences with which he had been charged could no longer suffice to justify his excessively long detention and that such reasoning showed that the court had breached the principle of the presumption of innocence. He stressed that three of his co-defendants had already been released.

25. On 13 October 1994 the Poznań Court of Appeal dismissed his appeal, holding that the lower court's findings had not concerned the question of the applicant's guilt but the likelihood that he had committed the offences in question. It rejected the applicant's argument that the three of his co-defendants had been released and stressed that that could not be a factor militating in favour of releasing him. Furthermore, the Court of Appeal considered that the applicant's detention should continue because of the serious nature of the charges laid against him and the fact that he had acted in an organised group.

26. On 25 October 1994 the applicant made yet another application for release on bail, submitting that his family situation was critical, especially as the mental state of his wife and daughter had markedly worsened. On 7 November 1994 the court dismissed his application, finding that even though the applicant's detention was indeed putting a severe strain on his

family, the serious nature of the charges laid against him justified his detention.

27. In the meantime, on 6 November 1994, the applicant attempted to commit suicide by swallowing fifty tablets of the sedative “*Relanium*”[diazepam]. On 6 December 1994 a psychiatrist examined him in prison and found that he was suffering from depression that resulted from his being held in detention and from his prolonged separation from his family.

28. Subsequently, on an unspecified date, the Poznań Regional Court scheduled the trial for 7 and 8 December 1994. However, on 5 December 1994 both hearings were cancelled because the presiding judge was ill.

29. On 12 and 13 December 1994 the applicant and his defence counsel lodged further applications for release, still relying on the difficult situation of the applicant’s family and, in particular, on the fact that the applicant’s minor daughter was in need of treatment in hospital. On 19 December 1994 the Poznań Regional Court ordered that evidence from medical experts from the Łódź Medical Centre be obtained to determine the child’s condition. The experts submitted their report on 2 February 1995. The court dismissed the application on 6 February 1995. The applicant appealed. The Poznań Court of Appeal upheld the first-instance decision on 11 July 1995.

30. On 21 February 1995 the Poznań Regional Court held a hearing but decided not to examine the case on the merits and remitted it to the Poznań Regional Prosecutor. It ordered that a further investigation be carried out. On 10 March 1995, on the parties’ appeals, the Poznań Court of Appeal quashed that decision and ordered the lower court to deal with the merits of the case.

31. During the hearing of 21 February 1995 the applicant unsuccessfully asked the court to release him on bail. The relevant decision was upheld on appeal on 10 March 1995. Subsequently, on 13 and 20 April 1995 and on a further unknown date, the applicant made similar applications. They all were dismissed on 15 May 1995 at first instance and, on appeal, on 22 June 1995.

32. On 6 June 1995 the applicant again asked the Poznań Regional Court to release him on bail in view of his family situation. He also submitted that the criminal proceedings against him were not progressing with the requisite expedience. On 1 June 1995 the court dismissed the application on the ground that there was a reasonable suspicion that he had committed the offences in question acting in an organised group. It attached considerable importance to the fact that the applicant had attempted to obtain a very substantial loan by false pretences. The court acknowledged, however, that his detention, which at the material time had exceeded eighteen months, had lasted for a long time. Yet in the court’s opinion, that fact did not in itself change the reasons given to justify his being held in custody. The applicant appealed against that decision. The appeal was dismissed on 11 July 1995.

33. On 24 July 1995 the Poznań Regional Court dismissed another application for release made by the applicant on 11 July 1995. That decision was upheld on appeal on 10 August 1995.

34. On 25 August 1995 the court held a hearing. The court did not deal with the merits of the case and adjourned the trial to 15 December 1995.

During that hearing the applicant and one of his co-defendants asked for release. The court released the applicant and his co-defendant with a condition that they submit to police supervision and ordered the applicant to surrender his passport. The court further observed that at the material time the length of their detention was nearly two years and that it was not desirable to hold them in custody, especially as the proceedings had to be adjourned for several months. The court found that there was no risk of collusion and that police supervision would be sufficient to secure the proper conduct of the trial. On 8 September 1995, on the Poznań Regional Prosecutor's appeal, the Poznań Court of Appeal upheld the first-instance decision and the reasons given for it.

35. Later, the court listed two hearings for 4 January and 11 March 1996. Those hearings were cancelled; the first as one of the defence lawyers had failed to appear, the second because another defence lawyer asked the court to give him extra time to study documentary evidence adduced by the prosecution.

36. On 9 April 1996 the trial court held the first hearing on the merits. On 13 and 14 June 1996 the trial continued. The court heard evidence from several witnesses called by the prosecution.

37. The next hearing was listed for 19 August 1996 but subsequently cancelled since certain lay and expert witnesses had failed to appear. During the hearing of 23 October 1996 the court heard evidence from one witness. On 9 December 1996 the court heard evidence from three witnesses called by the defence and adjourned the trial because several other witnesses had failed to appear. The court fined those witnesses, considering that they had not supplied any satisfactory explanation to justify their absence. The next hearing was listed for 23 January 1997; during that hearing the court heard evidence from one witness and ordered that evidence from experts be heard at the next hearing, scheduled for March.

38. On 27 March 1997 the court did not hear evidence from experts because one of them had in the meantime died. For that reason, the trial was adjourned *sine die*. At that hearing, the court lifted the order to surrender the applicant's passport. It considered that it could not be said that in the course of the trial the applicant had obstructed its conduct and held that at the current stage of the proceedings there was no danger of his absconding or attempting to tamper with the process of obtaining evidence.

39. On 9 September 1997 the applicant, maintaining that no hearing on the merits had been held in his case since 23 January 1997, complained to

the Ombudsman (*Rzecznik Praw Obywatelskich*) about the length of the proceedings and asked him to intervene on his behalf.

40. The applicant's trial was to restart on 4 December 1997 but was postponed to 29 December 1997 because the presiding judge was ill. On the latter date the court adjourned the trial since one of the co-defendants had failed to appear. During the hearing of 9 February 1998 the court heard evidence from an expert and one witness but adjourned the trial to 9 March 1998. On that day the court once again adjourned the trial because a witness had been absent.

41. On 6 April 1998 the court held a hearing and heard evidence from one witness. It then postponed the trial to 20 May 1998. On the latter date it adjourned the trial *sine die*, considering that evidence from an expert in international banking transactions needed to be obtained. The trial court did, however, encounter certain difficulties in finding a suitable expert. Eventually, in October 1998, the presiding judge appointed A.J., who assured the court that he would prepare the relevant report by the end of November 1998. Yet as that report was in effect submitted to the court's registry on 1 December 1998 and the expert could not appear before the court at a hearing listed for 26 November 1998, the court postponed the trial to 7 December 1998.

42. On the above-mentioned date the trial was adjourned to 11 January 1999 because R.B., one of the applicant's co-defendants, had not appeared before the court. The police informed the court that R.B. had apparently left Poland together with his family.

43. On 11 January 1999 the Regional Prosecutor asked the court to sever the charges against R.B. and to proceed with the trial. The court made an order to that effect and, at the same hearing, heard evidence from an expert.

44. The next hearing was listed for 1 February 1999. At that hearing, the applicant produced certain documents from the year 1995 and asked the court to obtain evidence from an expert in graphology. The court granted his application and appointed the expert on 9 April 1999, instructing him to prepare the report by the end of that month.

The report was submitted to the court's registry on 10 May 1999.

45. After obtaining the report and serving its copies on the parties, the Regional Court (*Sąd Okręgowy*) set the date for the parties' final submissions for 21 June 1999. On 28 June 1999 it gave judgment. The applicant was sentenced to four years' imprisonment. All parties to the proceedings except for one of the applicant's co-defendants appealed.

46. The Poznań Court of Appeal heard appeals on 17 February 2000. It quashed the first-instance judgment and remitted the case. The Regional Court listed the retrial for 7 July 2000 but the hearing was subsequently cancelled. The proceedings are still pending in the Poznań Regional Court.

In a letter of 4 September 2001, the applicant informed the Court that since 7 July 2000 the trial court had held hearings at six-month intervals and had so far heard evidence from four witnesses.

II. RELEVANT DOMESTIC LAW

47. At the material time the rules governing detention on remand were contained in Chapter 24 of the Law of 19 April 1969 – Code of Criminal Procedure (*Kodeks postępowania karnego*) (“the Code”) – entitled “Preventive measures” (*Środki zapobiegawcze*). The Code is no longer in force. It was repealed and replaced by the Law of 6 June 1997 (commonly referred to as the “New Code of Criminal Procedure”), which entered into force on 1 September 1998.

48. The Code listed as “preventive measures”, *inter alia*, detention on remand, bail and police supervision.

Article 209 set out the general grounds justifying imposition of the preventive measures. This provision read:

“Preventive measures may be imposed in order to secure the proper course of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence.”

Article 217 § 1 defined grounds for detention on remand. The relevant part of this provision stated:

“Detention on remand may be imposed if:

1. there is a reasonable risk that an accused will abscond or go into hiding, in particular when he has no fixed residence [in Poland] or his identity cannot be established; or
2. there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means, or
3. an accused has been charged with a serious offence [for the commission of which an accused could be liable to a sentence of a minimum of three years’ imprisonment] or has relapsed into crime in the manner defined in the Criminal Code; or
4. an accused has been charged with an offence which creates a serious danger to society.”

49. The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the principle that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

Article 213 § 1 provided:

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

Article 225 stated:

“Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of those measures, are considered adequate.”

Finally, Article 218 stipulated:

“If there are no special reasons to the contrary, detention on remand should be lifted, in particular when:

- (1) it may seriously jeopardise the life or health of the accused; or
- (2) it would entail excessively burdensome effects for the accused or his family.”

50. At the relevant 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 applications for prolongation of detention made by a prosecutor during an investigation; and proceedings relating to the detainee’s applications for release.

As regards the last of these, Article 214 of the Code provided the following:

“An accused may at any time apply to have a preventive measure lifted or varied.

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.”

THE LAW

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

51. The applicant complained that his detention on remand had been excessive and he alleged a violation of Article 5 § 3 of the Convention, the relevant part of which provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Period to be taken into consideration

52. The period to be considered under Article 5 § 3 started on 6 November 1993, when the applicant was detained on the charges of forgery and attempting to obtain a loan by false pretences, and ended on 25 August 1995, when the Poznań Regional Court released him under police supervision (see also paragraphs 8 and 34 above). It accordingly lasted one year, nine months and nineteen days.

B. Reasonableness of the length of detention

1. The parties' arguments

53. The applicant maintained that the period of nearly two years he had been held in custody was incompatible with the "reasonable time" requirement set out in Article 5 § 3.

In his submission, the grounds relied on by the authorities in their detention decisions could not be considered "sufficient" and "relevant" so as to justify the entire period of his detention.

On this point, the applicant stressed that a mere suspicion that he had committed the offences with which he had been charged could suffice as a basis for his detention only at an early stage of the proceedings. In addition, such circumstances as the fact that an accused did not confess to the charges or that his testimonies contained statements contradictory to evidence obtained by the prosecution could not justify keeping a person in detention. To hold otherwise would mean that a detainee, in order to be released, had to plead guilty. It would render meaningless the protection afforded to a defendant by the principle of the presumption of innocence.

54. It was true, the applicant added, that in some cases the prolonged detention might be necessary to secure the proper conduct of the proceedings and, in particular, to ensure that the process of obtaining evidence followed its proper course. In his case this could have been a valid reason, had the authorities conducted the proceedings with diligence, as required under Article 5 § 3. However, they had failed to do so. For instance, at a very early stage of the proceedings it had become apparent that, given the nature of the offences in question, evidence had needed to be obtained from an expert in graphology. Yet it was not until April 1994 that the investigating prosecutor had decided that such evidence be taken.

55. Referring to the court proceedings, the applicant pointed out that the first hearing in his case had been listed several months after the bill of indictment had been lodged with the court. Further hearings had frequently been adjourned or cancelled and over the entire period of his detention the trial before the Regional Court had hardly progressed.

In conclusion, the applicant invited the Court to hold that his right to a “trial within a reasonable time or release pending trial” had not been respected.

56. The Government disagreed. They argued that the relevant authorities had given valid and rational reasons for the applicant’s detention.

They stressed that the applicant had been charged with serious offences and that a severe penalty had been likely to be imposed on him. In the Government’s opinion, the suspicion against the applicant had been reasonable and strongly supported by evidence obtained during the investigation.

57. The Government further maintained that the need to secure the proper conduct of the proceedings, in particular the need to obtain evidence from several experts and to hear certain witnesses in Germany, justified the applicant’s prolonged detention. In that context, the Government also attached considerable importance to the fact that the applicant – in contrast to his co-defendants – had not confessed to the charges and that his testimony had been contradictory to evidence gathered during the investigation and trial.

Finally, the Government contended that the relevant authorities efficiently and expeditiously handled the case and, given the voluminous evidence obtained during the proceedings, had not failed to act with diligence, as required under Article 5 § 3 of the Convention.

2. *The Court’s assessment*

58. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

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, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must 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 well-documented facts stated 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 (see *Jabłoński v. Poland*, no 33492/96, § 80, 21 December 2000).

59. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (*ibid.*).

60. Turning to the circumstances of the present case, the Court observes that the relevant authorities advanced two principal reasons for the applicant’s detention, namely the reasonable suspicion that he had committed the offences with which he had been charged and the serious nature of those offences. In the authorities’ opinion, the latter was shown by, *inter alia*, the fact that the applicant had acted together with a group of several persons and the significant amount of money that had been involved in the crime (see paragraphs 8, 21, 23, 25-26 and 32 above).

In their submission before the Court, the Government also pleaded that the applicant’s detention had been necessary to secure the proper conduct of the proceedings and, more particularly, to ensure that the process of obtaining evidence followed its proper course (see paragraph 57 above).

61. In the light of the material before it and, in particular, the documents supplied by the parties, the Court does not find that the last of those grounds was in fact expressly mentioned by the domestic courts (see paragraphs 8, 21, 23, 25-26 and 32 above). It notes, however, that those courts considered that the applicant should be kept in custody because there were no special circumstances militating in favour of releasing him on health grounds or on account of the psychological and other effects that his detention entailed on his family, as defined in Article 218 of the Code of Criminal Procedure (see paragraphs 23, 26 and 32 above).

62. The Court accepts that the suspicion against the applicant of having committed the serious offences with which he had been charged may initially have warranted his detention. Yet it does not consider that that ground, even taken together with the fact that the courts did not perceive the applicant’s personal and family situation as decisively weighing against his being detained, was “relevant” and “sufficient” to justify the entire period in issue.

63. In that context, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see the *Neumeister v. Austria* judgment of 27 June 1968, Series A no. 8, p. 3, § 3; and the *Jabłoński v. Poland* judgment cited above, § 83).

64. In the present case the Court notes that during the entire period the applicant was kept in detention, and despite his repeated applications for release on bail, the authorities did not envisage any other guarantees that he would appear for trial. They did not give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraphs 21, 23, 25-26, 32, 34 and 49 above).

What is more, it does not emerge from the relevant decisions that at any stage of the applicant’s detention the authorities considered that those other measures would not have warranted his appearance before the court or that the applicant, had he been released, would have in any way obstructed the course of the trial. Nor did they mention any factor indicating that there was a risk of the applicant’s tampering with evidence, absconding, going into hiding or evading any sentence that might be imposed (see paragraphs 21, 23, 25-26 and 32 above).

65. That being so, the Court cannot, on the material before it, see any definitive indication that the applicant’s detention indeed served the purpose of securing the unimpeded conduct of the trial.

It accordingly concludes that the reasons relied on by the authorities in their decisions were not sufficient to justify the applicant’s being held in custody for the whole period in question.

There has therefore been a violation of Article 5 § 3 of the Convention.

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

66. The applicant further complained that the Polish courts had failed to examine “speedily” his applications for release that he had made on 10 and 21 June, 19 July and 12 and 13 December 1994. In his view, there had been a violation of 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. Periods to be taken into consideration

67. The Court notes at the outset that the first three applications for release were examined jointly and that the first-instance decision was given by the Poznań Regional Court on 19 September 1994 and then upheld by the Poznań Court of Appeal on 13 October 1994 (see paragraphs 19-20 and 22-25 above). The periods under consideration accordingly lasted four months and three days in respect of the first application, four months less

eight days in respect of the second and three months less six days in respect of the third one.

68. As regards two further applications, which – likewise – were joined, the relevant rulings were given on 2 February 1995 at first instance and on 11 July 1995 on appeal (see paragraph 29 above). Consequently, the first set of proceedings was completed after a lapse of seven months less one day and the second after seven months less two days respectively.

B. Compliance with Article 5 § 4

1. The parties' arguments

69. The applicant considered that the authorities had ruled on his applications for release after a very substantial delay and that the need to obtain medical evidence in the course of the relevant proceedings could not explain their overall, inordinate length.

70. Referring, first, to the proceedings instituted by his applications for release filed on 10 and 21 June and 19 July 1994 respectively, the applicant pointed out that the Government did not supply any convincing explanation why the courts had needed some four months to determine whether his detention should continue.

Secondly, the applicant stressed that his further applications made on 12 and 13 December 1994 had been examined as late as 11 July 1995, that is to say, after a lapse of seven months. In the applicant's opinion, such a lengthy period was clearly incompatible with the notion of "speediness" laid down in paragraph 4 of Article 5.

71. The Government admitted that there had been certain delays in the proceedings complained of. However, those delays had been fully justified by the need to obtain medical evidence concerning either the applicant's wife or his daughter's health.

This, by the nature of things, had taken some time. In that respect, the Government stressed that the applicant had relied on grounds specified in Article 218 of the Code of Criminal Procedure, maintaining, in particular, that his continued detention had been putting a severe strain on his family. It had been the courts' duty to check the applicant's statements and ascertain on the basis of medical evidence whether, in view of his family situation, he should indeed be released.

72. In respect of the applications made by the applicant in June and July 1994, the Government pointed out that while the relevant applications had been pending, the courts had examined the issue of the lawfulness of his detention in other proceedings that had concerned the prolongation of his detention. In the latter proceedings the courts had made their rulings on 27 June and 11 August 1994 respectively. Those decisions should therefore be considered as instances of activity and diligence displayed by the

authorities in the proceedings relating the lawfulness of the applicant's detention considered as a whole.

73. In respect of the subsequent applications made on 12 and 13 December 1994, the Government underlined that the Regional Court had made a ruling on 6 February 1995, which was immediately after obtaining an expert report concerning the state of health of the applicant's daughter. Furthermore, the Regional Court and the Court of Appeal had in the meantime ruled on several other unsuccessful applications for release that the applicant repeatedly made. The relevant decisions determining the lawfulness of his detention had been given on 21 February, 10 March, 15 May, 19 June and 22 June 1995 respectively.

In sum, the Government considered that the proceedings relating to the lawfulness of the applicant's detention – if looked at as a whole and bearing in mind the fact that at the same time the parallel proceedings initiated either by the prosecutor or by the applicant himself had been pending – had satisfied the requirements of Article 5 § 4.

2. *The Court's assessment*

74. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance, *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

75. The finding whether or not the relevant decision was taken "speedily" within the meaning of that provision depends on the particular features of the case. In certain instances the complexity of medical – or other – issues involved in a determination of whether a person should be detained or released can be a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements. That does not mean, however, that the complexity of a given dossier – even exceptional – absolves the national authorities from their essential obligation under this provision (see, *mutatis mutandis*, *Baranowski v. Poland* cited above; and *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

76. In that context, the Court also recalls that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see, for instance, *Jabłoński v. Poland* cited above, § 93).

77. In the present case the Government suggested that the length of the proceedings complained of should be assessed bearing in mind the fact that at about the same time the other proceedings relating to the applicant's continued detention were pending (see paragraphs 72-73 above).

In point of fact, the Court observes that it is true that while the applicant's applications of 10 and 21 June and 19 July 1994 were pending, the Regional Court and the Court of Appeal dealt with the Poznań Regional Prosecutor's application for the applicant's detention to be prolonged until 31 October 1994 and made the relevant rulings on 27 June and 11 August 1994. It is also true that when the applications of 12 and 13 December 1994 were awaiting their examination, the Regional Court and the Court of Appeal dealt with, and rejected, several further applications for release or appeals filed by the applicant between 21 February and 6 June 1995 (see paragraphs 21 and 31-32 above).

78. However, in the Court's view, those circumstances did by no means absolve the judicial authorities from conducting the habeas corpus proceedings complained of in a manner compatible with Article 5 § 4. Even if a detainee has made several applications for release, that Article does not give the authorities either a "margin of discretion" or a choice in respect of which of them should be handled more expeditiously and which at a slower pace. All such proceedings are to run "speedily".

79. While the Court is not called upon to give its opinion on whether or not those other parallel proceedings referred to by the Government were conducted "speedily", it cannot but note that all of them in fact lasted for considerably shorter periods than the proceedings at issue. The total duration of the procedure relating to the prosecutor's application for the applicant's detention to be prolonged was some two months (see paragraph 21 above). That was much shorter than the proceedings initiated by the applicant.

Likewise, all the applications for release the applicant filed from 21 February to 6 June 1995 were determined within terms ranging from some three weeks to about two months (see paragraphs 31-32 above).

80. Assessing all the pertinent facts, the Court considers that even the undisputed need to obtain medical evidence in the course of the impugned proceedings cannot explain their overall length which was – respectively – from about three to about seven months.

The Court consequently holds that there has been a violation of Article 5 § 4 of the Convention.

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

81. The applicant maintained, lastly, that his right to a "hearing within a reasonable time" had not been respected and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. Period to be taken into consideration

82. The proceedings started on 6 November 1993 and are still pending (see paragraphs 8 and 46 above). On the date of the adoption of the present judgment their length has accordingly amounted to seven years, ten months and seven days.

B. Reasonableness of the period in question

1. The parties' arguments

83. The applicant emphasised the fact that the original first-instance proceedings in his case had lasted nearly six years. In his submission, that substantial delay could not be explained by the – certain – complexity of his case or by the alleged illness of one of his co-defendants. That illness in fact lasted only three days.

The applicant further relied on the arguments he adduced in the context of the Article 5 § 3 complaint and concluded that his right to have a “criminal charge against him determined within a reasonable time” had not been respected.

84. The Government contended that in the light of the criteria established by the Court in respect of the “reasonable time” requirement, the proceedings complained of could not be considered as excessively long.

In their view, the case was a very complex one. The determination of the charges against the applicant concerned complicated issues of international banking transactions. The nature of those charges had required that in the course of the investigation and original first-instance proceedings the authorities obtain voluminous documentary evidence and hear evidence from numerous lay and expert witnesses. They had also had to request the German authorities to take evidence from certain witnesses residing abroad.

85. The Government admitted that the first hearing on the merits had been held as late as 9 April 1996. This had, however, resulted from events for which the trial court could not be held responsible, namely the illness of one of the co-defendants, the illness of one of the judges, the death of an expert or the fact that witnesses had repeatedly failed to appear. Furthermore, the fact that – as late as February 1999 – the applicant had asked the court to obtain expert evidence concerning documents from 1995 had caused a delay in the proceedings because for that reason the trial had been postponed to 21 June 1999.

Lastly, making reference to the submissions they made in respect of the conduct of the authorities under Article 5 § 3, the Government pointed out that the courts had acted with due diligence and that it was demonstrated, in particular, by the number of hearings listed during the entire proceedings.

In sum, the Government considered that Article 6 § 1 had not been breached in the applicant's case.

2. *The Court's assessment*

86. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities (see, among many other authorities, *Kudła v. Poland* cited above, § 124).

87. The Court observes at the outset that it appears to have been common ground that the applicant's case has been of some complexity (see paragraphs 83-84 above).

The Court agrees that the complicated nature of the issues concerning international banking transactions that have been involved in the determination of the charges against the applicant and the need to obtain evidence from several experts have certainly played a role in prolonging the trial. This cannot however explain the entire length of the proceedings in question.

88. In that regard, the Court notes that in the original first-instance proceedings the first hearing on the merits was held on 9 April 1996, which was one year and ten months after the applicant had been indicted (see paragraphs 22, 36 and 85 above). Subsequently, from 23 January 1997 to 9 February 1998 all hearings were cancelled (see paragraphs 37-40 above). That resulted in a delay amounting to about one year.

Admittedly, the postponement of the original trial was – at least in some part – caused by events attributable to the applicant's co-defendants (see paragraphs 35 and 40 above). Nevertheless, the above-mentioned lack of progress in the proceedings resulted in a total delay of two years and ten months, a delay for which the Court does not find sufficient explanation and which it considers incompatible with the diligence required under Article 6 § 1.

89. The Court consequently holds that there has been a violation of Article 6 § 1 in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed a total sum of 2,087,700 Polish zlotys (PLN), of which 437,700 PLN was his claim under the head of pecuniary damage for loss of some part of profits from his business activity caused by his detention. In the context of pecuniary damage, the applicant alleged that due to the fact that he had been detained, his company had not been able to carry out previously-concluded, or to enter into new, contracts for sale of steel to Syria.

92. Under the head of non-pecuniary damage, the applicant first asked the Court to award him PLN 100,000,000 for distress and moral suffering resulting from a violation of his Convention rights.

He maintained, second, that his minor daughter suffered a serious mental handicap on account of his prolonged detention and resultant, highly disturbing separation from him, and asked the Court to make an award of PLN 350,000 in that respect.

Lastly, the applicant claimed PLN 300,000 for the fact that the trial court had ordered him to surrender his passport, which had made it impossible for him to continue activities in the field of international trade and had caused considerable distress.

93. The Government maintained that the claim was excessive in the extreme. They considered that should the Court find a violation of the Convention, such a finding would in itself constitute sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

94. The Court's conclusion, on the evidence before it, is that the applicant failed to show that the pecuniary damage pleaded was actually caused by his being in custody for the relevant period. Accordingly, it finds no justification for making an award to him under that head.

95. However, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of his detention and trial – which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant PLN 25,000 under this head.

B. Costs and expenses

96. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, did not seek any extra reimbursement of costs and expenses involved in the proceedings before the Court.

C. Default interest

97. 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 30 % 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention 25,000 (twenty-five thousand) Polish zlotys in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 30 % shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 4 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President