



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

FOURTH SECTION

CASE OF OLSTOWSKI v. POLAND

(Application no. 34052/96)

JUDGMENT

STRASBOURG

15 November 2001

FINAL

15/02/2002

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 Olstowski 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 V. BUTKEVYCH,

Mr J. HEDIGAN,

Mrs S. BOTOCHAROVA, *judges*,

and Mr V. BERGER, Section Registrar,

Having deliberated in private on 23 October 2001,

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

PROCEDURE

1. The case originated in an application (no. 34052/96) against the Republic of Poland lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Artur Olstowski (“the applicant”), on 7 February 1996.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the facts of his case disclosed a violation of Articles 5 § 3 and 6 § 1 of the Convention.

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).

5. The application 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.

6. By a decision of 15 February 2001 the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The arrest and detention on remand

9. On 14 December 1993 the applicant was arrested by the police. On 16 December 1993 the Starogard Gdański District Prosecutor (*Prokurator Rejonowy*) charged the applicant with the commission of robbery together with three accomplices and remanded him in custody. The charges related to a brutal assault of a businessman who had been attacked with a baseball bat and tear gas and robbed of 122,864 zlotys.

10. On 22 February 1994 the Gdańsk Regional Court (*Sąd Wojewódzki*) decided to extend the applicant's detention. On 1 March 1994 the applicant appealed against that decision to the Gdańsk Court of Appeal (*Sąd Apelacyjny*). On 16 March 1994 the appellate court dismissed the appeal. It rejected the applicant's contention that the Regional Court's decision referred only in general terms to the reasons justifying his detention. In addition, the appellate court considered that the evidence taken from one of the witnesses gave rise to reasonable suspicion that the applicant had committed the robbery.

11. On 24 May 1994 the Gdańsk Regional Court decided to extend the applicant's detention until 1 September 1994. It considered that the evidence showed that the applicant had probably committed the criminal offence with which he was charged. The court pointed out that several pieces of evidence remained to be taken, including the psychiatric examination of the applicant. It also considered that the fact that the investigation in the case was not concluded at that stage could not be attributed to the inactivity of the prosecuting authorities. On 27 May 1994 the applicant appealed to the Gdańsk Court of Appeal against that decision. On 15 June 1994 his appeal was dismissed.

2. The first bill of indictment

12. On 29 August 1994 the Gdańsk District Prosecutor filed with the Gdańsk Regional Court a bill of indictment. However, the Regional Court returned it to the District Prosecutor instructing him to elaborate its reasoning.

13. On 10 November 1994 the Gdańsk Regional Court dismissed an application for release made by the applicant. The court noted, *inter alia*, that the evidence gave rise to reasonable suspicion that the applicant had

committed a criminal offence, which constituted a significant danger to society (*znaczny stopień społecznego niebezpieczeństwa*). It also observed that the applicant's son was cared for by his cohabitee, who was assisted by her parents and the applicant's mother. The applicant appealed that decision.

14. On 15 and 21 November 1994 the applicant applied to the Gdańsk Regional Court for release from detention.

3. The second bill of indictment

15. On 28 November 1994 the Gdańsk District Prosecutor re-submitted a bill of indictment to the Gdańsk Regional Court.

16. On 5 December 1994 the applicant again applied to the Gdańsk Regional Court for release from detention but his application was dismissed on 6 December 1994.

17. On 14 December 1994 the Gdańsk Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 10 November 1994.

18. The applicant made a fresh application for release but it was on 17 January 1995 dismissed by the Gdańsk Regional Court. The court noted that the evidence gave rise to reasonable suspicion that the applicant had committed a criminal offence, which caused the significant danger to society. It also rejected the applicant's contention that he should be released because he had already spent a long period of time in detention waiting for a hearing and pointed out that a hearing in his case was fixed for 23 February 1995.

19. On 25 January 1995 the Gdańsk Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 17 January 1995. The appellate court referred to several pieces of evidence collected in the case, which in its opinion pointed to the applicant's guilt. It also recalled the significant danger to society caused by the criminal offence with which the applicant was charged and observed that, in view of the length of a sentence, which could be imposed on him for the commission of that offence, his detention was not excessively long.

20. On 23 February 1995 the Gdańsk Regional Court dismissed an application for release made by the applicant. On the same date the first hearing in the case was held. It was adjourned until 24 April 1995.

21. On 1 March 1995 the Gdańsk Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 23 February 1995 rejecting his application for release from detention. The appellate court referred, *inter alia*, to the significant danger to society caused by the criminal offence with which the applicant was charged and the fact that it carried a penalty exceeding five years' imprisonment.

The court further noted that the applicant had not submitted any evidence showing that the situation of his family called for his release. It also pointed out that the length of the proceedings before the Regional Court was

excessive. In that connection, the appellate court recalled that a period of three months had elapsed between the date on which the bill of indictment had been submitted to the trial court and the date of the first hearing. In addition, the first hearing had been adjourned for two months and only one day was reserved in the Regional Court's calendar for the second hearing which, in the appellate court's opinion, would result in a further adjournment as it would be impossible to take evidence from all four suspects in the case on a single day. The Gdańsk Court of Appeal finally recommended that the proceedings in the case be expedited.

22. On 24 April 1995 a hearing was held before the trial court.

23. On 19 May 1995 the Vice-President of the Gdańsk Court of Appeal replied to the applicant's letter of 8 April 1995 in which he had complained, *inter alia*, about a delay in the proceedings. The Vice-President advised the applicant that he was not in position to interfere with the proceedings and that only an independent court was competent to decide whether his detention on remand was justified.

Furthermore, the Vice-President observed that a hearing held on 23 February 1995 had been adjourned because of the absence of counsel. In addition, during a hearing held on 24 April 1995 evidence was taken from the defendants and eight witnesses. The inability to hold hearings at shorter intervals resulted from the heavy workload of judges and the lack of courtrooms. The Vice-President considered that, although the applicant's case disclosed a certain delay, it was not significant. He also advised the applicant that the President of the Gdańsk Regional Court had been informed about the necessity to expedite proceedings in criminal cases.

24. The next hearings in the case took place on 25 May and 5 July 1995. The Government submitted that on the latter date the applicant's cohabitee recanted her testimony and explained that she had been persuaded by the applicant to testify that he had been with her when the robbery had been committed.

25. On 25 July 1995 the Gdańsk Regional Court rejected as unsubstantiated the applicant's challenge to one of the judges considering his case.

26. On 28 September and 16 November 1995 the Regional Court held hearings in the case.

27. On 16 November 1995 the Gdańsk Regional Court rejected an application for release made by the applicant. On 29 November 1995 the Gdańsk Court of Appeal dismissed the applicant's appeal against that decision. The appellate court observed that the proceedings in the applicant's case had been expedited and that they should end before 21 December 1995. It also recalled the significant danger to society caused by the criminal offence with which the applicant was charged.

28. On 7 and 21 December 1995 hearings in the case took place.

29. The applicant made a further application for release but it was dismissed on 4 January 1996 by the Gdańsk Regional Court. On 17 January 1996 the Gdańsk Court of Appeal dismissed the applicant's appeal against that decision. The appellate court referred, *inter alia*, to the fact that the evidence collected in the course of the proceedings showed that charges laid against the applicant were sufficiently justified. In addition, the alleged criminal act was drastic and involved the theft of a significant sum of money. The court noted that the proceedings had been recently expedited and pointed out that a hearing scheduled for 24 January 1995 had been adjourned "for objective reasons". Moreover, the next hearing was fixed for 24 January 1996.

30. The next hearings were held on 24 January and 2 February 1996.

31. On 2 February 1996 the Gdańsk Regional Court rejected an application for release lodged by the applicant. On 14 February 1996 the Gdańsk Court of Appeal dismissed the applicant's appeal against that decision. It considered that the evidence in the case pointed at the applicant and his co-defendants. Furthermore, the court agreed with the applicant's submission that the proceedings in his case had already taken a significant period of time. However, it considered that, in view of the nature of the charges laid against the applicant, that period was not excessive. The appellate court further noted that only two witnesses remained to be heard in the case.

32. On 21 March, 9 and 26 April 1996 hearings were held before the Regional Court.

33. On 28 April 1996 the Gdańsk Regional Court rejected an application for release made by the applicant. On 15 May 1996 the Gdańsk Court of Appeal dismissed the applicant's appeal against that decision. The appellate court recalled the significant danger to society caused by the criminal offence with which the applicant was charged. It also pointed out that although the detention had lasted already thirty months, the trial court had not failed to try to expedite the proceedings. In that connection, it observed that five hearings had been held since the beginning of 1996 and that the trial court was not responsible for the failure to conclude the proceedings. Furthermore, the Court of Appeal was of the opinion that the worsening financial situation of the applicant's family did not constitute a ground for his release and observed that the applicant's wife was helped by social services.

34. Between 30 April and 12 July 1996 six hearings took place before the trial court.

35. On 25 July 1996 the Gdańsk Regional Court rejected an application for release made by the applicant together with his counsel. On unspecified dates the applicant and his counsel lodged separately appeals against that decision.

36. On 7 August 1996 the Gdańsk Court of Appeal dismissed the appeal lodged by the applicant's counsel against the Regional Court's decision of 25 July 1996. The court pointed out that the applicant was charged with a criminal offence, which carried "a heavy load of social harmfulness" (*wysoki ładunek społecznej szkodliwości*), especially in view of the manner in which it had been committed. Moreover, a severe penalty, which could be imposed for the commission of such an offence, justified the detention. The court also stated that although the judicial proceedings in the case were substantially delayed, they would be probably concluded shortly.

37. On 28 August 1996 the Gdańsk Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 25 July 1996. The appellate court referred to the grounds for its decision of 7 August 1996. In addition, it pointed out that the proceedings in the case had reached the final stage, as there had been a hearing fixed for 2 September 1996 and only two witnesses had been called to testify on that date.

38. On 7 November 1996 a hearing took place.

39. On 23 November 1996 the Gdańsk Regional Court rejected an application for release made by the applicant.

40. The next hearings were held on 26 November, 6 and 11 December 1996.

41. On 30 December 1996 the Gdańsk Regional Court transmitted the case-file to the Supreme Court (*Sąd Najwyższy*), together with a request that the applicant's detention on remand be extended.

42. On 16 January 1997 the Supreme Court decided to extend the applicant's detention until 30 April 1997. The court firstly observed that there existed in the applicant's case general legal grounds for detaining him on remand. It considered that, although the question of guilt would be decided by the trial court, the evidence collected in the course of the proceedings pointed towards the applicant's guilt.

Moreover, the Supreme Court pointed out that although the proceedings in the case had lasted so far more than three years, they had reached the final stage already in 1995. However, thirteen out of twenty hearings scheduled in 1996 had been adjourned for reasons over which the trial court had no influence. In addition, the counsel acting in the case were responsible for eleven adjournments. The Supreme Court based its decision to extend the applicant's detention on Article 222 § 4 of the Code of Criminal Procedure which provided for the prolongation of detention because of "other significant circumstances, which could not be overcome by the organs conducting the proceedings". It also pointed out that the proceedings could end in the near future after just a few additional hearings. Finally, the court recommended that additional defence lawyers be appointed in the case in order to avoid adjournments of hearings caused by the ill-health of counsel.

43. On 27 and 28 February 1997 hearings were held before the Regional Court.

4. The conviction

44. On 3 March 1997 the Gdańsk Regional Court convicted the applicant of robbery and sentenced him to eight years' imprisonment, a fine and disenfranchisement for a period of six years. The applicant appealed against that judgment to the Gdańsk Court of Appeal.

45. On 12 November 1997 a hearing took place before the appellate court.

46. The next hearing was held on 27 November 1997. The Government asserted that on that occasion one of the most important witnesses testified that the applicant's mother had put on her pressure to submit false evidence.

47. On 28 November 1997 the applicant made a new application for release but it was on 3 December 1997 dismissed by the Gdańsk Court of Appeal.

48. On 5 January 1998 the court received an expert opinion. On 13 January 1998 the applicant's legal aid counsel asked the court to exempt him from defending the applicant.

5. The quashing of the conviction and the release from detention

49. On 17 June 1998 the Gdańsk Court of Appeal quashed the judgment of the trial court and remitted the case to the prosecution service instructing it to carry out further investigation. On the same date the applicant was released from detention.

50. The Government submitted that on 3 December 1998 the victim of the robbery informed the Gdańsk Regional Court that he would not take part in the crime scene reconstruction because he had received threats to his life and family and was therefore afraid of the perpetrators of the crime.

6. The third bill of indictment

51. On 17 March 1999 the Starogard Gdański District Prosecutor filed with the Gdańsk Regional Court a new bill of indictment against the applicant.

52. The hearing held on 30 July 1999 before the Gdańsk Regional Court was adjourned. The Government submitted that the adjournment resulted from the applicant's failure to attend the hearing.

53. On 16 August 1999 the applicant withdrew a power of attorney from his counsel.

54. On 3 September, 8 October and 26 November 1999 hearings took place. On two latter occasions they were adjourned because of the absence of some of the accused.

55. The next hearings were held on 11 January, 25 February and 24 March 2000. The Government submitted that the first and the third of those hearings were adjourned because the applicant failed to appear before the court. The applicant averred that he attended all hearings except for two occasions, when he was prevented from appearing before the court by ill-health.

56. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW

57. At the material time, the Code of Criminal Procedure 1969 (“the Code”) listed as preventive measures, *inter alia*, detention on remand, bail and police supervision. Article 209 of the Code provides as follows:

“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.”

58. Furthermore, the Code allowed authorities a margin of discretion as to whether to continue the enforcement of preventive measures. Detention on remand was regarded as the most severe preventive measure. Article 213 of the Code provides as follows:

“A preventive measure shall be immediately quashed or changed if the grounds therefor have ceased to exist or if new circumstances have arisen, which justify quashing a given measure or replacing it with one that is either more or less severe.”

59. Article 225 of the Code provides:

“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 these measures, are considered adequate.”

60. Article 217 of the Code, before it was amended on 1 January 1996, provided in so far as relevant:

“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 his identity cannot be established or he has no permanent domicile, or
2. there is a reasonable risk that he will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means, or
3. the accused was charged with a commission of a criminal offence or acted as a habitual offender, as provided for by the Criminal Code, or
4. the accused was charged with the commission of an act which constituted a significant danger to society.”

61. Article 218 provides:

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

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

62. Until 4 August 1996, when the Code was amended, Polish law did not set out any statutory time-limits concerning detention on remand in court proceedings but only in respect of the investigative stage.

63. Article 222 of the Code, as applicable after 4 August 1996, provides in so far as relevant:

“3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning ordinary offences. In cases concerning serious offences this period may not exceed two years.

4. In particularly justified cases the Supreme Court may, upon the request of the court competent to deal with the case (...) prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings in the terms referred to in paragraph 3.”

64. Subsequently, paragraph 4 was extended to include also “other significant circumstances, which could not be overcome by the organs conducting the proceedings”.

THE LAW

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

65. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, which in so far as relevant 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

66. The applicant did not comment on the period to be taken into consideration. The Government submitted that the relevant period began on

14 December 1993 and ended on 3 March 1997, when the applicant was convicted by the trial court.

67. The Court agrees that the period to be taken into consideration began on 14 December 1993, when the applicant was taken into custody, and ended on 3 March 1997, when he was convicted. In that connection, the Court recalls that under its case-law the end of period referred to in Article 5 § 3 is the day on which the charge is determined, even if only by a court of first instance (see the *Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, p. 23, § 9).

68. The period to be taken into consideration therefore lasted almost three years and three months.

B. The reasonableness of the length of detention

1. Arguments before the Court

69. The applicant contended that his detention was unjustified. He made several applications for release because he had a right to do so under domestic legislation. Moreover, the applicant asserted that his criminal record was irrelevant to the assessment of the reasonableness of the length of his pre-trial detention.

70. The Government submitted that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by the reasonable and persistent suspicion that he had committed the offence with which he was charged. In that connection, they referred to "one very peculiar incident", namely the fact that during a hearing held before the Gdańsk Regional Court one of the co-accused said: "How could the witness recognise us when we were wearing masks?" The Government averred that in the light of the evidence it appeared very likely that the applicant would receive a prison sentence. They pointed out that on 3 March 1997 the Gdańsk Regional Court convicted the applicant and sentenced him to eight years' imprisonment.

71. Furthermore, the Government submitted that there existed the danger of pressure being brought to bear on witnesses. In that respect, they referred to their submissions concerning the statements made by witnesses on 5 July 1995, 27 November 1997 and 3 December 1998. The Government further asserted that the applicant's pre-trial detention was justified by the risk of repetition of offences. They referred to "a long and rich history of assaults and robberies" committed by the applicant since the beginning of the 1990s.

72. The Government also contended that the applicant's case was "of extremely high complexity". The prosecuting authorities asked the trial court to hear fifty-five witnesses and to read out in court testimony of other forty-five witnesses. In addition, evidence was taken from expert witnesses.

The applicant on numerous occasions made applications for release and appealed against decisions dismissing them. Consequently, the case file was transmitted between the courts, which was time-consuming.

73. The Government concluded that the courts displayed special diligence and duly considered grounds of the applicant's detention. On the other hand, the applicant failed to present the courts with any new facts justifying his release.

2. *The Court's assessment*

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

74. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

75. 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 dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true 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.

76. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

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

77. The Court observes that it appears to be agreed between the parties that the applicant's detention was initially justified by reasonable suspicion that he had committed the offence with which he was charged. It sees no reason to hold otherwise and will therefore proceed to ascertain whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty.

78. The Court notes that the domestic courts in refusing to release the applicant relied in particular on "the significant danger to society" caused by a criminal offence with which he was charged, the length of a sentence which could be imposed on him for the commission of that offence and its drastic nature, as well as "a heavy load of social harmfulness" carried by the offence in question. These grounds of detention go to the notion of the gravity of the offence. However, the Court has repeatedly held that it cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001, unpublished). In addition, the Court observes that the first and the last of these grounds are very general and do not seem to reflect a diligent examination of all the facts arguing for or against the existence of a genuine requirement of public interest justifying in the applicant's case a departure from the rule of respect for individual liberty.

79. Furthermore, the Court notes the Government's argument that the statements made by witnesses on 5 July 1995, 27 November 1997 and 3 December 1998 showed that the applicant's pre-trial detention was justified by the danger of pressure being brought to bear on witnesses (see paragraphs 24, 46 and 50 above). The Court agrees that the first of these statements could give rise to the legitimate concern about improper pressure put on witnesses. However, it was made almost twenty months before the end of the applicant's pre-trial detention and cannot alone justify its overall length. As for the two remaining statements, the Court notes that they were made well after the end of the period taken into consideration and the Government have not shown how they could be relevant to the assessment of the grounds given by the national authorities to justify the applicant's pre-trial detention.

80. The Government also submitted, without pointing to any court decision actually referring to that ground, that the applicant's detention was justified by the risk of repetition of offences. However, even assuming that this was one of considerations taken into account by domestic courts, the Court is not convinced that in the circumstances of the instant case it could justify almost three years and three months of detention on remand.

81. The Court accordingly considers that the grounds stated in the impugned decisions were not "relevant" and "sufficient" to justify the applicant's being kept in detention for three years and three months. It follows that the Court does not have to ascertain whether the competent

national authorities displayed “special diligence” in the conduct of the proceedings (see paragraph 76 above).

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

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

83. The applicant contended that the criminal proceedings in his case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which in so far as relevant 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

84. The Court notes that the period to be taken into consideration for the purpose of assessing the length of the criminal proceedings from the angle of the “reasonable time” requirement under Article 6 § 1 began on 14 December 1993, when the applicant was arrested (see paragraph 9 above). Since the proceedings are still pending, they have lasted so far about seven years and ten months.

B. Reasonableness of the length of proceedings

85. The applicant contended that the length of criminal proceedings in his case was in breach of Article 6 § 1; the Government, on the other hand, disputed this view.

86. The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case, the parties’ conduct, and so on. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment so that the Court does not consider it necessary to consider these questions in detail (see, *mutatis mutandis*, the Obermeier v. Austria judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; the Ferraro v. Italy judgment of 19 February 1991, Series A no. 197, pp. 9-10, § 17; the Triggiani v. Italy judgment of 19 February 1991, Series A no. 197, p. 24, § 17; the Mori v. Italy judgment of 19 February 1991, Series A no. 197, p. 37, § 16; the Colacioppo v. Italy judgment of 19 February 1991, Series A no. 197, p. 51, § 15, and the Adiletta and Others v. Italy judgment of 19 February 1991, Series A no. 197, pp. 65-66, § 17).

87. The Court considers that the case was not particularly complex as it concerned charges resulting from a single instance of robbery. In addition, the Court notes the inept prosecution of the case which led to the bill of indictment against the applicant being lodged three times. It follows that the Court cannot regard as “reasonable” in the instant case a lapse of time of about seven years and ten months.

There has therefore been a violation of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

89. The applicant sought an award of 71,600 zlotys (PLN) to compensate him for lost wages and health.

90. The Government considered that the amount claimed by the applicant was inordinately excessive.

91. The Court’s conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by his being held in custody for the relevant period. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

B. Non-pecuniary damage

92. The applicant also sought an award of PLN 119,200 for non-pecuniary damage. That amount comprised PLN 33,000 for the recourse by the prosecution service to “the extremely painful, coercive and repressive measures” in the applicant’s case and PLN 86,200 for moral suffering and distress.

93. The Government considered that the amount claimed by the applicant was inordinately excessive.

94. The Court is of the view that the applicant has failed to demonstrate that he suffered non-pecuniary damage as a result of the alleged misconduct in the prosecution of his case. On the other hand, it considers that the applicant suffered non-pecuniary damage on account of the protracted length of his detention and trial, which is not sufficiently compensated by

the finding of a violation of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant PLN 20,000.

C. Costs and expenses

95. The applicant also claimed PLN 2,500 by way of legal costs and expenses incurred in domestic proceedings.

96. The Government asserted that the applicant's claim was inordinately excessive.

97. The Court recalls that to be entitled to an award of costs and expenses under Article 41, the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Court or to obtain reparation therefor. However, it considers that the applicant has not shown that the legal costs and expenses claimed by him were incurred in order to prompt domestic courts to comply with the requirements of Articles 5 § 3 and 6 § 1 (see, *mutatis mutandis*, *Malinowska v. Poland*, no. 35843/97, § 105, 14 December 2000, unpublished). The Court accordingly dismisses the claim.

D. Default interest

98. 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 6 § 1 of the Convention;
3. *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, 20,000 (twenty 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;

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

Done in English, and notified in writing on 15 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President