



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

THIRD SECTION

CASE OF SALAPA v. POLAND

(Application no. 35489/97)

JUDGMENT

STRASBOURG

19 December 2002

FINAL

19/03/2003

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 Salapa v. Poland,

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

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr P. KÜRIS,
Mr R. TÜRMEŃ,
Mr J. HEDIGAN,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 April and 5 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 35489/97) 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 Marek Sałapa (“the applicant”), on 23 July 1996.

2. The applicant was represented by Mr Węgliński, a lawyer practising in Łódź. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, under Article 5 § 3 that he was deprived of his liberty by a decision of the public prosecutor who was not a “judge or other officer authorised by law to exercise judicial power”, under Article 5 § 4 that the proceedings concerning his detention on remand were not adversarial, under Article 8 that his correspondence with the Convention organs was intercepted, opened and read, and under Article 6 § 1 that the criminal proceedings against him exceeded a reasonable time.

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 Third 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 partial decision of 3 April 2001 the Court declared the application partly inadmissible and adjourned the examination of the remaining complaints.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section.

8. By a decision of 30 April 2002 the Court declared the remainder of the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1955. He is currently serving a prison sentence.

A. The criminal proceedings against the applicant

10. On 26 February 1996 the Regional Prosecutor remanded the applicant in custody on suspicion of drug trafficking, committed from August until November 1995 in conspiracy with other persons. In the detention order the prosecuting authorities stressed that the testimony given during the investigations by the co-suspects strongly supported the suspicion against the applicant.

11. On 15 March 1996 the Jelenia Góra Regional Court (“the Regional Court”) dismissed the applicant's appeal against the detention order. On 25 March 1996 and on an unknown later date the applicant's requests for release were refused by the Wrocław Regional Prosecutor. On 29 March 1996 the Regional Prosecutor prolonged the applicant's detention until 30 June 1996, invoking the complexity of the case. On 2 and 22 April 1996 the applicant's appeals against these decisions were dismissed by the Appellate Prosecutor. On 16 May 1996 the Regional Court further prolonged the applicant's detention on remand until 31 August 1996. On 5 June 1996 the Wrocław Court of Appeal (“the Court of Appeal”) dismissed the applicant's appeal against this decision.

12. On 19 June 1996 the Regional Prosecutor prolonged the investigations in the case until 30 September 1996.

13. On 24 June 1996 the Regional Prosecutor refused the applicant's new request for release and to have the detention on remand changed for a more lenient preventive measure. On 26 August 1996 the Court of Appeal prolonged the applicant's detention until 30 September 1996.

14. On 25 September 1996 the Wrocław Regional Prosecutor prolonged the investigations until 31 December 1996. On 30 September 1996 the Court of Appeal prolonged the applicant's detention until the same date. On 14 November 1996 the Supreme Court upheld the decision of 30 September 1996, considering, *inter alia*, that applicable domestic law did not require that the evidence in support of his detention was such as to allow a conviction. It was sufficient that there were strong indications that the applicant had committed the offence in question.

15. On 19 December 1996 the Court of Appeal prolonged the applicant's detention until 24 February 1997, having regard to newly discovered circumstances of the case which would justify bringing charges of forgery against the applicant, and to the need for translating some judicial documents from Germany. The Wrocław Regional Prosecutor prolonged the investigations until 31 May 1997. On 7 February 1997 the Prosecutor General lodged a motion with the Supreme Court to have the applicant's detention prolonged until 30 April 1997.

16. On 10 February 1997 the Supreme Court upheld the decision of 19 December 1996. On 17 February 1997 it prolonged the applicant's detention until 30 April 1997. On 25 March and 7 April 1997 the Regional Prosecutor refused the applicant's further requests for release. The applicant appealed to the higher prosecutor. On 2 and 22 April 1997 the Appellate Prosecutor upheld these decisions, relying, *inter alia*, on the findings of the investigations that the applicant had had a leading role in the organisation of a drug trafficking network, and to the fact that the evidence included the applicant's forged passport. This revealed a risk of absconding if the applicant were to be released.

17. On 21 April 1997 the Wrocław Regional Prosecutor closed the investigations. On 24 April 1997 the Wrocław Regional Prosecutor submitted the bill of indictment against the applicant and nine other co-accused to the Regional Court. The indictment contained a list of twenty witnesses to be interviewed and two hundred and twenty-four items of evidence to be presented at the hearing.

18. On 28 May 1997 the Regional Court filed a motion with the Court of Appeal, requesting that the case be taken over for consideration by the Wrocław Regional Court. It was stressed that the Regional Prosecutor and most of the witnesses to be summoned resided in Wrocław. On 4 June 1997 the Court of Appeal dismissed the motion.

19. On 4 September 1997 the Regional Court ordered the Detention Centre in Wrocław to carry out a thorough medical examination of the applicant, including an examination by a neurologist.

20. On 30 October 1997, at the applicant's request, the Regional Court sent the files in the case, which by then numbered twenty-one volumes, to the Wrocław prison to make them available to the applicant. From 3 until 6 November 1997 the applicant was reading the case-file. On 7 November

1997 the applicant requested again to have the access to the case-file in order to be able to study it thoroughly. He was subsequently granted such access on four occasions.

21. The first hearing in the case was held on 17 November 1997. During the hearing the Regional Court dismissed a motion lodged by one of the co-accused to have the case returned to the prosecution to complete the investigations. The hearing was adjourned as one of the co-accused failed to comply with the summons. The court informed the applicant that it would consider his new request for release after conducting a social enquiry at his home. The court fixed dates for next hearings for 22 December 1997 and 5 January 1998. From 2 until 6 December 1997 the case-file was, at the applicant's request, sent to the prison so that the applicant could study it.

22. On 15 December 1997 the court held a hearing at which it refused the applicant's motion for release. Due to the absence of two co-accused the court adjourned the hearing. On 22 December 1997 the same two co-accused again failed to attend the hearing. A warrant of arrest had been issued in respect of one of them, a certain D. M. The defence counsel of another co-accused, I. M., requested that experts be appointed in order to establish her state of mental health after the suicide of her brother some days earlier. The hearing was adjourned until 19 January 1998.

23. On 31 December 1997 the Regional Court requested the Warszawa-Praga District Police to conduct an enquiry at the applicant's home as to his family situation. As the results of the enquiry showed that the situation of the applicant's family was not such as to require that he be released, on 14 January 1998 the court refused his request of 17 November 1997. On 9 and 10 January 1998 the expert reports were submitted to the court, confirming the capacity of I. M. to take part in the hearings before the court.

24. At a hearing held on 19 January 1998 the co-accused D.M. failed to attend. The court did not allow the applicant's request for release and adjourned the hearing.

25. On 10 February 1998 the Supreme Court prolonged the applicant's detention until 31 July 1998. On 20 February and 9 March 1998 the applicant requested to be allowed access to the case-file. On 9 March 1998 during the subsequent hearing the applicant filed a motion that the case-file be remitted to the prosecutor to supplement investigation with regard to the circumstances and conditions in which two of the witnesses had made statements in their cases before the German courts. The applicant also challenged the judges of the panel examining the case and all judges of the Regional Court. He also requested a stay on the proceedings until D. M. was arrested and that the file from Germany be sent to the Regional Court and translated. He also requested his release. During the same hearing the court rejected all the applicant's requests. The applicant immediately filed appeals against these refusals and requested an adjournment of the hearing in order to have the case-file sent to the Court of Appeal for his appeals to be

considered. The court refused to do so. The cases of the two absent co-accused were separated from the applicant's case.

26. On 20 March 1998 the applicant again requested that the proceedings be stayed. On 24 March 1998 the Court of Appeal upheld the decision of 9 March 1998 refusing the applicant's motion. On 23 March 1998 the applicant requested to be allowed access to the case-file and filed six new procedural motions with the court. During the next hearing held on 30 March 1998 the applicant filed five other procedural motions, including a new motion to stay the proceedings.

27. At the beginning of April 1998 the applicant challenged the prosecutor conducting his case and requested that another one be appointed. On 6 April 1998 the applicant filed a complaint with the court, alleging inadequate access to the case-file which had not allowed him to prepare his defence properly.

28. On 7 April 1998 the Court of Appeal upheld the refusal to stay the proceedings of 30 March 1998. On 16 April 1998 the Wrocław Regional Prosecutor dismissed the applicant's challenge to the prosecutor, finding that it did not satisfy the applicable legal requirements. On 11 May 1998 the applicant complained to the Regional Court against his allegedly insufficient access to the case-file and requested permission to consult the records of the hearings. On 21, 22, 27, 28 and 29 May 1998 the applicant had access to the case-file in the detention centre.

29. During the hearing held on 1 June 1998 the applicant filed a motion for release and requested that the proceedings be stayed. He also requested that the case against D.M., which had been previously separated from his case, be examined together with his case. He further complained that his procedural rights had not been observed by the court, in particular that he had no proper access to all the volumes of the case-file at the same time and that he had not been given sufficient time for meetings with his defence counsel. His requests and complaints were dismissed by the court.

30. On 17 June 1998 the Appeal Court upheld the refusal to stay the proceedings of 1 June 1998. On 22 June 1998 the hearing was adjourned until 17 August 1998 due to the illness of one of the co-accused I.M.

31. On 30 July 1998 the Supreme Court, at the Regional Court's request of 3 July 1998, decided to prolong the applicant's detention until 31 December 1998. A hearing fixed for 17 August 1998 was adjourned due to the absence of three defendants, and the subsequent hearings were held on 24 August, 14 September, 5 and 19 October 1998. The applicant was again allowed access to the case-file from 28 September until 2 October 1998.

32. During the hearing held on 26 October 1998, the court questioned four witnesses. Two other witnesses failed to appear. The hearing was adjourned until 9 November 1998. During that hearing five witnesses were

interviewed and three other witnesses failed to comply with the summons. The hearing was adjourned until for 30 November 1998.

33. On 30 November 1998 four witnesses were interviewed. Seven other witnesses failed to attend the hearing. The court dismissed the applicant's new request for release and decided to admit evidence from the testimony of some police officers, concerning the conduct of the investigation in the case.

34. Next hearings were fixed for 14 December 1998 and 4 January 1999. On its session held *in camera* on 7 December 1998 the Regional Court decided to request the Supreme Court to prolong the applicant's detention until 30 June 1999.

35. On 14 December 1998 next hearing was held. Three witnesses were heard and one failed to attend. On 30 December 1998 the Regional Court requested the District Police in Brzeg Dolny to establish the whereabouts of witness D. M. At the hearing held on 4 January 1999 the court questioned one witness, whereas four others were absent. The applicant submitted a request to adjourn the questioning of the witnesses, relying on the absence of his defence counsel.

36. On 6 January 1999 the Supreme Court prolonged the applicant's detention until 30 April 1999. The Court observed that a number of hearings had been adjourned due to the failure of certain accused and of a number of witnesses to attend the hearings as summoned. It also had regard to the applicant's motions to take additional evidence. At the hearing held on 11 January 1999 witness G.D. was questioned. Three other persons summoned as witnesses failed to comply with the summonses.

37. At a subsequent hearing held on 18 January 1999 one of the co-accused was absent following an accident. The applicant and another co-accused requested that three new defence witnesses be heard in the case. The court adjourned the hearing. The subsequent hearing in the case was held on 25 January 1999 and two witnesses were questioned.

38. At the hearing held on 8 February 1999 the applicant requested access to the case-file, alleging that before the hearing his access had been insufficient to prepare his defence properly because he had never had access to all of the twenty volumes of the case-file at the same time. The applicant's counsel requested appointment of an expert in graphology in order to examine the authenticity of the signature of the co-accused S. P. on a certain document. The court adjourned the hearing.

39. On 15 February 1999 the applicant requested the Regional Court to grant him access to the entire case-file. On 1 March 1999 the court continued the hearing. Two witnesses were interviewed and one was absent. The court allowed the cross-examination of three witnesses and questioned another one.

40. At the next hearing held on 8 March 1999 one witness failed to appear. The court appointed an expert in graphology in order to examine the authenticity of the signature of the co-accused S.P. The court allowed the

applicant's request that a new witness be interviewed and dismissed other requests concerning the taking of further evidence.

41. On 15 March 1999 the hearing was continued and one witness was heard. The court decided to impose fines on two absent witnesses. It also allowed the applicant's lawyer's request to examine a file of another criminal case and adjourned the hearing. On 17 March 1999 a lawyer of one of the co-accused requested to have three new witnesses questioned and the court granted that request.

42. At the hearing on 22 March 1999 the court heard four witnesses. On 29 March 1999 the court decided to hold the hearing despite the fact that two of the co-accused failed to comply with the summonses. The court, at the applicant's request, called two new witnesses since the applicant's lawyer had not agreed that their testimony be read out in the court. The court adjourned the hearing and fixed the dates for the next hearings.

43. On 6 April 1999 the court held the hearing, despite the absence of the co-accused I. M. Four witnesses summoned for that date failed to comply with the summonses. The applicant and another co-accused requested to accept as disclosed the testimony of two witnesses living abroad without their being read out in court.

44. On 12 April 1999 a next hearing was held. The court read out the testimony of the co-accused D. M, whose whereabouts remained unknown, and two further witnesses were questioned.

45. At a next hearing, held on 13 April 1999, one witness refused to answer questions. One of the co-accused was absent, but the court decided to continue the hearing. The court dismissed a request to admit evidence from the file of another criminal case, related to the present case and terminated by the German courts. The court also refused to allow the applicant's motion for a fresh expert report on the signature of the accused S. P. and to enclose a file of another case against persons who had been witnesses in the case against the applicant and to hear two new witnesses.

46. At the hearing held on 14 April 1999 the Regional Court requested the Supreme Court to prolong the applicant's detention until 15 June 1999 so that further witnesses could be heard. The Regional Court observed that the proceedings had essentially come to a close, but that it was impossible to hear one witness who was detained in another case, and one of the accused, who was ill.

47. A new witness was interviewed on 19 April 1999. One co-accused, who was ill, did not attend the hearing. The court decided to summon a subsequent witness and fixed dates for the next hearings. On 26 April 1999 the court adjourned the hearing due to the absence of one of the lawyers. The presence of the lawyer was mandatory and the co-accused had not consented to the hearing being held in his absence.

On 29 April 1999 the Supreme Court prolonged the applicant's detention until 15 June 1999, having regard to such essential obstacles as the illness of

the co-accused I. M., new circumstances which were coming to light during the court proceedings and new evidence allowed by the court.

48. At a hearing before the Regional Court held on 30 April 1999 a new witness was present, but the hearing had to be adjourned due to the absence of the applicant's lawyer. The applicant did not agree that the hearing be continued. The court fixed dates for eight subsequent hearings until 1 June 1999.

49. On 4 May 1999 the hearing was adjourned, due to absence of the lawyers of three of the accused, including the applicant's. On 17 May 1999 the court decided to continue the hearing despite the absence of the accused I.M. who had submitted a sick leave certificate. One witness was questioned. The court ordered I. M.'s lawyer to submit I. M. sick leave certificate issued by a physician authorised to give certificates to justify the absence before a court on medical grounds.

50. On 20 May 1999, at the request of one of the lawyers, the court adjourned the oral pleadings of the parties until 24 May 1999. On 24 May 1999 the last hearing was held.

51. On 31 May 1999 the court gave a judgement in the case. The applicant was convicted of drug trafficking and forgery of documents and sentenced to ten years' imprisonment and a fine of 250,000 PLN. The court prolonged the applicant's detention until 30 September 1999 and the applicant appealed against the decision.

52. The applicant requested that written grounds for the judgment be prepared. On 2 July 1999 the Regional Court informed him that the case-file had been sent to the Court of Appeal as the complaints against the decision concerning prolongation of detention had to be considered and therefore the written grounds for the judgment could only be drawn up after the return of the case-file. On 9 July 1999 the Regional Court prolonged the time-limit for the grounds of the judgment to be prepared until 31 August 1999. The court stressed that the case was particularly complex and voluminous and that the case-file had meanwhile had to be sent to the Court of Appeal.

53. On 28 July 1999 the court informed the applicant about the new time-limit fixed for the preparation of the written grounds of the judgment. On 31 August 1999 the Regional Court again prolonged the time-limit in respect of the written grounds of the judgment until 10 September 1999, having regard to the complexity of the case. On 21 September 1999 the reasoned judgement, numbering sixty-four pages, was served on the applicant.

54. On 15 October 1999 the applicant lodged an appeal against the first-instance judgment with the Court of Appeal. On 16 February 2000 the Court of Appeal dismissed the applicant's appeal.

55. On 28 April 2000 the applicant lodged a cassation appeal against the second-instance judgement with the Supreme Court. He argued that the appellate court had failed to rectify errors of law committed by the first-

instance court. The first-instance court had in particular failed to address correctly the complaints relating to certain refusals to take evidence and to the fact that some evidence was not taken in an adversarial manner as the court had only decided to include it in the case-file. The applicant had thus been deprived of the possibility of questioning certain witnesses. On 2 April 2000 the Appellate Prosecutor in Wrocław filed his reply to the cassation appeal with the Supreme Court. On 7 June 2000 the Supreme Court dismissed the applicant's request to stay execution of his sentence.

56. On 30 October 2001 the Supreme Court dismissed the applicant's cassation appeal and the appeals filed by the two co-accused, the applicant's brother A.S. and A.M.

B. The applicant's correspondence with the organs of the European Convention of Human Rights

57. The letters from the applicant to the Secretariat of the European Commission of Human Rights, dated 29 April 1997, 13 May 1997, 14 May 1997 (2 letters) and 17 June 1997, were intercepted by prison guards. They opened and apparently forwarded them to the prosecuting authorities, who in turn later read and forwarded them to the addressee. The envelopes of these letters bear stamps of the Wrocław Detention Centre, together with the stamps "censored" ("*ocenzurowano*").

II. RELEVANT DOMESTIC LAW

A. Preventive measures

58. The 1973 Code of Criminal Procedure, applicable at the relevant time, listed as "preventive measures", *inter alia*, detention on remand, bail and police supervision.

59. Articles 210 and 212 of the Code applicable at the relevant time provided that before the bill of indictment was lodged with the trial court, detention on remand was imposed by a decision of a prosecutor. The decision to impose detention on remand could be appealed against, within a seven-day time-limit, to the court competent to deal with the merits of the case. In pursuance of Article 222 of the Code, the prosecutor could order detention on remand for a period not exceeding three months. When, in view of the particular circumstances of the case, the investigations could not be terminated within this period, detention on remand could, if necessary, be prolonged by the court competent to examine the merits of the case, upon the prosecutor's request, for a period not exceeding one year. This decision could be appealed against to a higher court.

60. After the bill of indictment was transmitted to the court, orders relating to detention were to be made by the court. A decision concerning preventive measures could be appealed to a higher court.

B. Proceedings to examine the lawfulness of detention on remand

61. At the material time there were three types of proceedings enabling a detainee to challenge the lawfulness of his detention. Under Article 221 § 2 of the Code of Criminal Procedure he could appeal to a court against a detention order given by a prosecutor (see above). Under Article 222 §§ 2 (1) and 3 he could appeal against a further decision by that court prolonging his detention at a prosecutor's request. Under Article 214 the detainee could at any time request the competent authority to quash or alter the decision concerning the preventive measure imposed in his case. Such an application had to be decided by the prosecutor or, after the bill of indictment had been lodged with the court competent to deal with the case, by that court, within three days.

C. Correspondence of persons detained on remand with the Convention organs

62. The situation of persons detained on remand was at the relevant time governed by the Code of Execution of Criminal Sentences of 1969. Under Article 89, all correspondence of each detainee was to be opened, read and, if need be, subjected to censorship, unless a prosecutor or a court decided otherwise. No provision of the Code provided for any remedy to contest the manner or scope of the censorship of a detainee's correspondence.

63. The rights of persons detained on remand as regards their correspondence were further set out in Rule 33 of the Rules of Detention on Remand. These Rules provided that the correspondence of persons detained on remand was subject to screening by the authority conducting the criminal proceedings, i.e. either a public prosecutor or a court, depending on the stage reached in the proceedings.

64. On 6 July 1997 a new Code of Enforcement of Criminal Sentences was enacted by parliament. Article 102 of this Code, which entered into force on 1 January 1998, provides that convicted persons are entitled to non-screened correspondence with the State authorities, including the Ombudsman. Article 103 of the Code further provides that convicted persons and their lawyers may lodge complaints with the international agencies established under international treaties on protection of human rights, ratified by Poland. Prisoners' correspondence in such cases shall be dispatched with no delay and shall not be subjected to screening.

65. Pursuant to Article 512 of the new Code, the rights of persons detained on remand shall, in principle, be at least equal to those of persons convicted by a final judgment.

THE LAW

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

66. The applicant complained that he had been deprived of liberty by a decision of the public prosecutor, who was not a “judge or other officer authorised by law to exercise judicial power”. The applicant relied on Article 5 § 3 of the Convention which, insofar as relevant, reads:

“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. ...”

67. The Government made no submissions in regard to this complaint.

68. The Court recalls that in its judgment in the case of *Niedbala v. Poland*, no. 27915/95, §§ 48-57, 4 July 2000, unreported) it has already examined whether under Polish legislation in force at the relevant time a prosecutor could be regarded as an officer exercising “judicial power” within the meaning of Article 5 § 3 and offering guarantees against any arbitrary or unjustified deprivation of liberty. The Court found a violation of Article 5 § 3 in that case, considering that applicable domestic law did not provide for such guarantees.

69. The Court finds that the present case is similar to the *Niedbala* case, and considers that there are no grounds on which to reach a different conclusion than in the latter case. The Court therefore concludes that the applicant's right to be brought “before a judge or other officer authorised by law to exercise judicial power” has not been respected.

70. Consequently, there has been a violation of Article 5 § 3 of the Convention.

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

71. The applicant complained that in the proceedings concerning his detention he had not been brought before a judge and that he had not had any possibility of effectively arguing any points relied on by the prosecution in support of his detention. The applicant submitted that the prosecutor's requests to have his detention prolonged had not been served on him in order to allow him to comment on the prosecution's arguments advanced in

support of his further detention. These proceedings had therefore not been adversarial. The applicant invoked 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.”

72. The Government refrained from assessment of this complaint.

73. The Court recalls that it has already examined whether the proceedings concerning review of the lawfulness of detention on remand under the provisions of Polish law, as it stood at the relevant time, complied with the requirements of Article 5 § 4 of the Convention. It has considered that such proceedings fell short of these requirements and, consequently, found a violation of that provision (see *Niedbala v. Poland* judgment referred to above; *Kawka v. Poland*, no. 25874/94, §§ 53-61, 9 January 2001; *Trzaska v. Poland*, no. 25792/94, §§ 70-79, 11 July 2000; *Włoch v. Poland*, no. 27785/95, §§ 125-136, 9 October 2000). The Court sees no grounds on which to find otherwise in the present case.

74. Accordingly, there has been a violation of Article 5 § 4 of the Convention.

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

75. The applicant complained that the criminal proceedings against him had exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention, which in its relevant part reads:

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

76. The Government emphasised that the case had been complex, mainly because of the volume of the evidence gathered by the prosecuting authorities during the investigations. There had been ten accused in the case. The prosecution authorities had assigned numerous experts to prepare various reports concerning, *inter alia*, the mental health of the applicant, of certain of the co-accused and of two witnesses. Other expert opinions related to certain issues arising in connection with chemical problems involved in drug production and trafficking. Expert reports were also submitted by specialists in graphology.

77. Regarding the conduct of the authorities, the Government argued that there had been some objective difficulties in the conduct of the case, which could not be held against the courts. Several witnesses had repeatedly failed to attend the hearings or had been unable to testify, which had made it necessary for the court to adjourn hearings on twenty one occasions. Certain hearings had had to be adjourned because certain defence counsel had failed

to comply with the summonses. One of the co-accused, I. M., had fallen ill and three hearings had had to be adjourned because of her absence. Further, four hearings had likewise had to be adjourned as another co-accused, D.M., had failed to comply with the summonses and had gone into hiding. The difficulties in the taking of the evidence had been acknowledged by the Supreme Court which, in its decision of 6 January 1999 (§ 36 above), had prolonged the applicant's detention beyond the statutory time-limit, referring to these problems.

78. The Government submitted that the authorities had conducted the applicant's case diligently, having terminated the judicial proceedings after thirty-two hearings. They admitted that there had been a delay between 24 April 1997, when the bill of indictment had been submitted to the Jelenia Góra Regional Court, and 17 November 1997, when the first hearing on the merits of the case had been held. However, five decisions as to the lawfulness of the applicant's detention had been given during that period, and the case-file had twice been transmitted to the detention centre so that he could have access to it in order to conduct his defence effectively.

79. As to the applicant's conduct, the Government emphasised that the hearings on 4 January and 30 April 1999 had been adjourned at his request, as his counsel had been absent. Further, on 18 January, 8 and 29 March 1999, more than six months after the first hearing had been held in the case, the applicant had requested that new witnesses be called. Moreover, the applicant's case-file had been sent five times to the detention centre in order to ensure him effective access to it.

80. The Government further submitted that the applicant had availed himself of his procedural rights by, *inter alia*, lodging repeated requests for release. Therefore, the case-file had had to be forwarded several times from the Jelenia Góra Regional Court to the Wrocław Court of Appeal in order for the latter to rule on the applicant's appeals. This necessarily had prolonged the proceedings. Finally, the applicant had submitted clearly ill-founded requests to stay the proceedings, to remit the case-file to the prosecuting authorities and to complete the investigations, and motions for the judges to step down, challenging their impartiality. It must therefore be considered that his conduct contributed to the prolongation of the proceedings.

81. The applicant reiterated that the proceedings had lasted too long.

82. The Court observes that the period under consideration commenced at the latest on 26 February 1996, when the applicant was remanded in custody. On 30 October 2001 the Supreme Court dismissed the applicant's appeal on points of law. The period to be examined would therefore be five years, eight months and four days.

83. The Court recalls that the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the

case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, *Szeloch v. Poland*, no. 33079/96, § 101, 22 February 2001).

84. The Court is of the opinion that the case can be considered complex. The Court has regard to the fact that there were ten accused and that charges concerning, *inter alia*, international drug trafficking were brought against them. Therefore some evidence had to be taken from case-files of criminal cases pending before German courts. During the investigations the prosecuting authorities gathered two hundred and twenty-four items of evidence to be presented to the court. There were also many witnesses to be interviewed. Already by October 1997, even before the court hearings commenced, the files of the case numbered twenty-one volumes. The written grounds of the first-instance judgment of 31 May 1999 numbered sixty-four pages. The Court's attention has also been drawn in this respect to the fact that on 9 July 1999 the Regional Court stressed that the case was particularly complex and voluminous (see § 52 above).

85. As to the conduct of the authorities, the Court observes that the bill of indictment was submitted to the Regional Court on 24 April 1997 and that the first hearing on the merits of the case was held almost seven months later, on 17 November 1997. However, there was considerable procedural activity throughout that period, caused mainly by the applicant's requests for release (see §§ 17-20 above). The Court's attention has also been drawn to the fact that during that period the case-files were forwarded to the prison in order for the applicant to have access to them (see § 20).

86. The Court further observes that a number of hearings in the case were adjourned because either the accused or the witnesses failed to comply with the summonses (see, for instance, §§ 21, 22, 30, 31, 32, 36). By contrast, no hearings were adjourned for reasons, which could be attributed to the court's failure to organise the proceedings efficiently. On the whole, the hearings in the case were scheduled at regular intervals, and when they were adjourned it was mostly for reasons which cannot be attributed to the court.

87. The Court also notes that the court made efforts to expedite the proceedings. At the first hearing on 17 November 1997 it refused the motion lodged by one of the accused to have the case returned to the prosecution in order for the investigations to be completed. In February 1998 the cases of two of the co-accused, who were absent, were separated from the applicant's case to be considered in separate proceedings. At the hearing on 9 March 1998 the court refused a number of the procedural motions lodged by the applicant, including the motion to stay the proceedings (see § 25), which, if accepted, would have prolonged the proceedings. At the same hearing the court decided that the cases of two of the co-accused, who had gone into hiding, were to be separated from the applicant's case. On 30 March and 7 April 1998 the first- and second-

instance courts, respectively, refused the applicant's request to stay the proceedings (see §§ 26, 28 above).

88. As to the applicant's conduct, the Court first observes that at the hearing held on 9 March 1998 he lodged four procedural requests with the court, which were all refused. The applicant immediately appealed against the court's refusals and requested that the hearing be adjourned in order to have the case file sent to the Court of Appeal for his appeals to be examined. The court refused to do so. Again, on 20 March 1998 the applicant unsuccessfully requested that the proceedings be stayed. On 23 March 1998 he filed six new procedural motions with the court, and on 30 March 1998 he submitted five new procedural motions. At the hearing on 13 April 1999 the court refused to allow the applicant's motion for a fresh expert report to be prepared and to have two new witnesses called. The Court observes that, since these motions were unsuccessful, they did not prolong the proceedings. However, they do cast some doubt as to whether it was indeed the applicant's intention to have the proceedings concluded speedily.

89. The Court further observes that on 18 January 1999 the applicant requested that three new witnesses be heard by the court, which, accordingly, adjourned the hearing. At the hearing on 8 February 1999 the applicant requested that further evidence be admitted, and the court again adjourned the hearing in order for this new evidence to be taken. Later on, on 8 March 1999, he requested the court to interview another witness and his request was granted. Subsequently, on 15 March 1999, the hearing was adjourned when the applicant requested that evidence be taken from a file of another criminal case. On 29 March 1999 the applicant, as was his right, refused to permit that the testimony of two absent witnesses be read out in the court. The court adjourned the hearing in order to hear the witnesses. On 30 April 1999 the applicant, again as was his right, did not agree that the hearing be held in the absence of his counsel and the court accordingly adjourned the hearing. On the whole, the Court considers that the applicant considerably contributed to the prolongation of the proceedings.

90. Having regard to the foregoing, the Court considers that there has been no violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

91. The Court has also examined *ex officio* the issues arising in the present case from the application of legislation concerning control of correspondence of prisoners detained on remand under domestic law as it stood at the material time. The Court had regard to Article 8 of the Convention, which, insofar as relevant, reads:

“1. Everyone has the right to respect for his (...) correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

92. The Government admitted that certain letters from the applicant to the Secretariat of the European Commission of Human Rights and to the Registry of the Court had been intercepted and forwarded from the detention centre to the prosecutor's office competent to deal with the applicant's case. The envelopes of these letters were stamped “subject to censorship” (“*ocenzurowano*”). However, no interference with the contents of the letters by the prison guards or by the prosecutor had been established. Under domestic law in force at the relevant time the correspondence of detained persons had automatically been subjected to screening by the authorities conducting criminal proceedings. The prosecutor had had a margin of discretion in deciding whether to intercept, open and read the correspondence of the detainee. The Government maintained that in the present case the stamp on the envelope of the letters to the Convention organs could not be regarded as sufficient proof that these letters had been so intercepted, opened and read.

93. The Court first observes that it has not been alleged that the applicant's letters were censored. The issue here only is whether the applicant's correspondence to the Convention organs was subjected to the screening procedure provided for under Polish law applicable to the correspondence of persons remanded in custody at the material time. The Court observes in this respect that the laws concerned allowed for automatic intercepting, opening and reading of all correspondence of detainees, against whom criminal proceedings were pending, by the authority conducting these proceedings.

94. The Court finds that the practice of intercepting, opening and reading prisoners' letters amounts to an interference with the right to respect for correspondence. It also recalls that it is of the utmost importance for the effective operation of the system of individual petition guaranteed under Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV judgment, p. 1219, § 105; *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1192, § 159). The Court is well aware that no allegations of undue pressure have been made in the present case. However, it considers that it is of prime importance for the effective exercise of the right of individual petition under the Convention that the correspondence of prisoners with the Court not be subject to any

form of control, which might hinder them in bringing their cases to the Court.

95. It must therefore be examined whether the interference satisfied the conditions set out in § 2 of Article 8. In particular, the measure at issue must be "in accordance with the law" which requires in particular that the contested measure should have a basis in domestic law. In this respect the Court notes that Section 33 of the Rules on Detention on Remand, as applicable at the material time, provided that the correspondence of persons detained on remand was to be opened and read by the authority conducting the criminal proceedings (see §§ 63-66 above). Accordingly, there was legal basis for the interference complained of.

96. However, the expression "in accordance with the law" does not only necessitate compliance with domestic law, but also relates to the quality of that law. Domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (the, among other authorities, *Domenichini v. Italy*, judgment of 15 November 1996, *Reports* 1996-V, p. 1800, § 33; *Petra v. Romania*, 23 September 1998, *Reports* 1998-VII, p. 2853, § 36; *Di Giovine v. Italy*, no. 39920/98, 26.7.2001, § 24).

97. The Court observes that the applicable provisions of Polish law did not draw any distinction between the different categories of persons with whom the prisoners could correspond. Neither were the authorities obliged to give a reasoned decision specifying grounds on which the letter could be intercepted, opened and read. Consequently, correspondence with the international human rights organs could be opened and read. Moreover, the relevant provisions did not lay any principles governing the exercise of this control of correspondence. In particular, they failed to specify the manner and the time-frame within which it should be effected. Likewise, the law did not specify whether the detainee was entitled to be informed about any alterations of the contents of his/her outgoing correspondence. Further, the law did not provide for a remedy enabling a detained person to contest the manner or scope of the application of the screening measures provided for by law.

98. In this connection, the Court notes the Government's submission that the prosecutor had a margin of discretion in deciding whether to control the correspondence of a detainee. However, in the Court's view, this argument is not convincing as in fact the applicable law clearly provided for the automatic screening of all letters. Therefore it cannot be said that the authorities exercised any discretion in this respect.

99. The Court concludes that the applicable law did not indicate with sufficient clarity the extent of the relevant authorities' discretion in that sphere or provide guidance on how that discretion was to be exercised.

Accordingly, the interference with the applicant's correspondence did not satisfy the requirements of being "in accordance with the law".

100. The Court recalls similar cases, concerning the correspondence of detained persons, in which it found that Polish law as it stood at the material time, did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in respect of control of prisoners' correspondence (*Niedbala v. Poland* judgment, referred to above; *Radaj v. Poland*, nos. 29537/95 and 35453/97, 28 November 2002). The Court sees no grounds on which to find otherwise in the present case.

101. In the light of the foregoing, the Court does not consider it necessary in the instant case to examine whether the other requirements of paragraph 2 of Article 8 were satisfied.

102. There has accordingly been a violation of Article 8 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant requested PLN 250,000 in financial compensation for pecuniary and non-pecuniary damage.

105. The Government submitted that the applicant's claims were grossly excessive and that the damage sustained by the applicant, if any, should be assessed in the light of the relevant case-law of the Court in its cases against Poland, and with regard to the national economic circumstances.

106. As to the applicant's claim for pecuniary damage, the Court finds that there is no causal link between the circumstances of the case and the damage allegedly sustained by the applicant. Accordingly, the Court makes no award under this head.

107. The Court considers that in the circumstances of the case, the finding of a violation constitutes in itself a sufficient just satisfaction for any non-pecuniary damage, which could have been sustained by the applicant.

B. Costs and expenses

108. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* unanimously that there has been a violation of Article 8 of the Convention;
5. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction in respect of non-pecuniary damage;
6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President