



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

FIRST SECTION

CASE OF KLAMECKI v. POLAND (NO. 2)

(Application no. 31583/96)

JUDGMENT

This version was rectified on 8 September 2003 under Rule 81
of the Rules of the Court

STRASBOURG

3 April 2003

In the case of Klamecki v. Poland (no. 2),

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr L. GARLICKI, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 13 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 31583/96) 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 Ryszard Klamecki (“the applicant”), on 6 December 1995.

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

3. The applicant alleged, in particular, that, after having been arrested, he had not been brought before a judge; that his detention pending trial had exceeded a “reasonable time”; that the proceedings designed to review the lawfulness of his detention had not been adversarial; and that his right to respect for his correspondence and his family life had been violated.

4. The application was declared partly admissible by the Commission on 20 October 1997 and transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

5. The application was allocated to the First 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.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings against the applicant and his detention

7. On 22 November 1995 the Wrocław-Stare Miasto District Prosecutor (*Prokurator Rejonowy*) charged the applicant with fraud committed together with several accomplices and detained him on remand for three months in view of the reasonable suspicion that he had committed the offence in question and the risk that he might obstruct the proper course of the proceedings.

8. On an unknown later date the applicant appealed to the Wrocław-Śródmieście District Court (*Sąd Rejonowy*) against the order for his detention. On 27 November 1995 he lodged a pleading supplementing his appeal. In that pleading, he submitted that his detention had been imposed by a prosecutor, a party to the proceedings, whereas under the Convention detention had to be ordered either by a judge or by another officer exercising judicial power.

9. On 5 December 1995 a single judge, sitting as the Wrocław-Śródmieście District Court, dismissed the appeal, finding that the applicant's detention had an adequate legal basis. The applicant did not participate in the court session, whereas the Wrocław-Stare Miasto District Prosecutor did.

10. On 28 November and 14 December 1995 the applicant asked the Wrocław-Śródmieście District Court to appoint a defence lawyer for him. That application was granted on 19 January 1996.

11. On 11 December 1995 the applicant asked the Wrocław-Stare Miasto District Prosecutor to release him. The application was dismissed on 12 December 1995 by the prosecutor at first instance and on 30 December 1995 on appeal. The authorities held that there was a reasonable suspicion that the applicant had committed the offence with which he had been charged. They also considered that holding him in detention was necessary to secure the proper conduct of the proceedings.

12. On 21 December 1995 the applicant made a further application for release. He complained about the prison conditions and maintained that his continued detention had severely affected his health. The prosecution asked medical experts to examine the applicant. The doctors made their report on 22 December 1995. They concluded that the applicant could receive adequate medical treatment in prison.

Basing themselves on that report, the authorities refused to release the applicant. The relevant decisions were made on 2 January 1996 by the

prosecutor at first instance and on 24 January 1996 on appeal. The prosecutors, referring to the experts' report, held that the applicant's health did not militate decisively against his being kept in detention.

13. In the meantime, the Wrocław Regional Prosecutor (*Prokurator Wojewódzki*) took over the investigation from the Wrocław-Stare Miasto District Prosecutor.

14. On 5 February 1996 the applicant asked the Regional Prosecutor to release him in view of his bad health. He stressed that he was suffering from diabetes, high blood pressure and arteriosclerosis. He maintained that he did not receive proper medical treatment and diet in prison. The application was dismissed on 7 February 1996 by the prosecutor at first instance and on 21 February 1997 on appeal. The main ground on which the authorities relied was that, according to a medical report obtained on 6 February 1996, the applicant's general condition was not an obstacle to keeping him in detention.

15. On 15 February 1996, on an application made by the Wrocław Regional Prosecutor, the Wrocław-Śródmieście District Court prolonged the applicant's detention until 30 June 1996. The applicant appealed on 26 February 1996. He argued that he had never been brought before a judge at any stage of the proceedings relating to the lawfulness of his detention. On 1 March 1996 the Wrocław Regional Court (*Sąd Wojewódzki*) upheld the first-instance decision. The Wrocław Regional Prosecutor participated in the court session but neither the applicant nor his lawyer did.

16. On 18 March 1996 the applicant asked the Wrocław-Śródmieście District Court to release him under police supervision. The matter was referred to the Wrocław Regional Prosecutor because at the investigation stage only a prosecutor could deal with an application for release (see also paragraph 82). That application was rejected on 3 June 1996 at first instance and on 28 June 1996 on appeal. The prosecution considered that there was a reasonable suspicion that the applicant had committed the offence with which he had been charged. They also pointed out that there were no particular circumstances militating in favour of his release, as defined in Article 218 of the Code of Criminal Procedure.

17. On 6 May and 3 June 1996 the applicant again asked the Wrocław-Śródmieście District Court to release him under police supervision. Those applications, after having been referred to the Wrocław Regional Prosecutor, were dismissed by that prosecutor on 28 June 1996 and, on appeal, on 14 July 1996. The authorities considered that the original grounds given for the applicant's detention were still valid.

18. On 25 June 1996, on an application by the Wrocław Regional Prosecutor, the Wrocław-Śródmieście District Court prolonged the applicant's detention until 30 September 1996.

19. On 25 July and 5 August 1996 the applicant made further applications for release under police supervision to the Wrocław Regional

Court, claiming a breach of Article 5 § 3 of the Convention in that he was neither tried within a reasonable time nor released pending trial.

20. On 30 August 1996 the court held a session and, after having heard the submissions of the Wrocław Regional Prosecutor, dismissed the applications in view of the reasonable suspicion that the applicant had committed the offence with which he had been charged and the need to ensure the proper conduct of the proceedings.

21. The applicant appealed on 5 September 1996. He submitted that the proceedings concerning his applications for release were not adversarial because he could not take part in any court session at which those applications were examined, whereas the prosecution could put forward any arguments they wished in his absence. On 16 September 1996 the Wrocław Court of Appeal (*Sąd Apelacyjny*), after having heard the prosecutor's submissions, upheld the first-instance decision and the reasons given therefor.

22. Meanwhile, on 9 August 1996, the Wrocław-Śródmieście District Court had considered the applicant's request for release, in which he had alleged a breach of Article 5 § 3 of the Convention in that after having been arrested he had not been brought before a judge. The court dismissed the request and held, *inter alia*, that the fact that the detention had been imposed by the prosecutor, i.e. a party to the proceedings, was not a factor that would justify releasing him. On 31 October 1996, on an appeal filed by the applicant, the Wrocław Regional Court quashed the decision of 9 August 1996 and held that, in accordance with the Law of 4 August 1996 on Amendments to the Code of Criminal Procedure (see also "Relevant domestic law and practice" below), only a regional court was competent to deal with the applicant's application for release.

The Regional Court further examined that application and rejected it on the ground of the reasonable suspicion that the applicant had committed the offence with which he had been charged. It also considered that the need to ensure the proper course of the proceedings and the likelihood of a severe sentence to be imposed on the applicant justified his being held in custody. The Wrocław Regional Prosecutor participated in the court session but neither the applicant nor his lawyer did.

23. The applicant appealed. On 22 November 1996 the Wrocław Court of Appeal held a session and, after having heard the prosecutor's opinion, upheld the first-instance decision and the reasons given therefor.

24. In the meantime, on 30 September 1996, the Wrocław Regional Prosecutor had lodged a bill of indictment with the Wrocław-Śródmieście District Court. The applicant was indicted together with 10 other persons on charges of aggravated fraud, appropriation of public property, receiving stolen goods, making a false declaration, and forgery. The case-file comprised 19 volumes.

25. The trial was listed for 18 and 19 December 1996. Meanwhile, on 21 November 1996 the court appointed a new lawyer for the applicant.

26. On 1 December 1996 the applicant asked the District Court to release him. He maintained that his detention had lasted an excessively long time and, what was more, he had previously been detained in other criminal proceedings for some two years. He had accordingly spent in custody in all more than three years. That, he stressed, had in reality amounted to serving a prison sentence. He relied on Article 5 § 3 of the Convention.

27. On 4 December 1996 his application was dismissed at first instance and on 31 December 1996 on appeal. The courts considered that the applicant should still be kept in custody in view of the severity of the sentence which might be imposed and the need to ensure the proper conduct of the proceedings.

28. On 18 December 1996 the court postponed the trial to 29 January 1997 because one of the applicant's co-defendants was ill.

29. On 19 December 1996 and, subsequently, on 13, 15 and 29 January 1997 the applicant made complaints about the conduct of his officially-appointed counsel and asked the trial court to appoint a new lawyer for him.

30. On 31 December 1996 the applicant again asked the court to release him under police supervision. On 7 January 1997 the application was dismissed in view of the need to ensure the proper conduct of the trial and the severity of the sentence that might be imposed on him.

31. On 15 January 1997 the applicant appealed, submitting that neither he nor his lawyer had been informed of, or summoned to, the court's session at which his application for release had been examined and that the relevant procedure did not comply with the requirements of Article 5 § 4 of the Convention. On the same day he asked the Regional Court to allow him to attend the session at which that court would deal with his appeal so that he could put forward his arguments.

32. On 17 January 1997 the Wrocław-Śródmieście District Court refused to proceed with the appeal since, under the recently amended provisions of the Code of Criminal Procedure, no appeal lay in law against a court decision on an application for release.

33. On 29 January 1997 the court postponed the trial to 20 February 1997 because a certain J.F., one of the applicant's co-defendants had failed to appear. The court severed the charges against J.F.

34. On 10 February and on 3, 10, 17 and 25 March, and on 1, 8 and 17 April 1997 the applicant made further unsuccessful applications for release under police supervision to the Wrocław-Śródmieście District Court. The applications were dismissed on 12 February and on 10, 12, 20 and 28 March, and on 4, 11 and 22 April 1997 respectively. The court considered that the applicant should still be kept in custody in view of the need to secure the proper conduct of the trial and the severity of the

sentence which might be imposed, a sentence that ranged from 1 to 10 years' imprisonment.

35. On 20 February 1997 the trial was to start but the applicant made yet another complaint about the conduct of his officially-appointed counsel and the court adjourned the hearing, finding it necessary to appoint a new defence lawyer for him.

36. On 5 March 1997 the court adjourned the next hearing since E.Cz., one of the applicant's co-defendants, had failed to appear. The court ordered that E.Cz. would be brought by the police to the next hearing, which was listed for 19 March 1997. Yet on the latter date the trial was postponed because the presiding judge was ill.

37. The trial began on 10 April 1997. On 10 and 21 April 1997 the court heard evidence from the applicant.

38. At the hearing of 10 April 1997 the applicant again asked the court to release him under police supervision. The court rejected his application. It found that keeping him in custody was necessary to secure the proper conduct of the trial. The court also stressed that the severity of the sentence that might be imposed on the applicant was an important factor that argued against releasing him.

39. Subsequently and throughout the trial, the applicant made numerous – but likewise unsuccessful – applications for release. Between 14 May and 4 December 1997 he made 26 such applications and appealed against each refusal. The courts reiterated the grounds they had previously given for his continued detention.

40. The applicant also repeatedly challenged the impartiality of the trial judges and complained about the conduct of the registry clerk who was responsible for the record of the trial. From 12 May to 1 December 1997 he made 16 applications for the judges to be disqualified from dealing with his case.

41. After the hearing that was held 10 April 1997 (see paragraph 37 above), the next one was listed for 21 May 1997. On that day, the court heard evidence from the applicant's wife.

42. Subsequently, the court made an application under Article 222 § 3 of the Code of Criminal Procedure (see paragraphs 90-91 below) to the Supreme Court (*Sąd Najwyższy*), asking it to prolong the applicant's and Cz.S.'s detention for 6 further months.

43. In the meantime, hearings set for 18 June and 3 July 1997, had been cancelled; the former because J.S., one of the applicant's co-defendants, had failed to appear, the latter because the District Prosecutor and another co-defendant, E.Cz. had not been present.

44. On 12 and 13 July 1997 a massive flood-wave inundated the South-West of Poland, severely affecting Wrocław. A considerable part of the city was washed away or destroyed.

45. On 14 July 1997 the applicant complained to the Wrocław-Śródmieście District Court that his health was deteriorating very rapidly and that he was seriously affected by the harsh prison conditions resulting from the flood in Wrocław. He asked for release.

46. On the same day the applicant made a petition to the President of the Wrocław Regional Court, the President of Wrocław-Śródmieście District Court and the Wrocław-Śródmieście District Court. He complained that on 12 and 13 July 1997 a flood-wave had inundated the prison building up to the third floor. The light, electricity and sewage systems had been destroyed. There had been no drinking water, food or washing facilities. He and his fellow inmates were, in his words, kept like animals in unventilated, overcrowded and stinking cells. He asserted that an official tolerance for that situation amounted to inhuman and degrading treatment.

47. Subsequent hearings, which were to be held on 6 and 27 August 1997, did not take place because, on the first date, the defence counsel for J.S. and Cz.S had not been present and, on the second, J.S.'s counsel had not appeared and the police had not brought E.Cz. from prison.

48. The next hearing, scheduled for 9 September 1997, was postponed to 13 October 1997 because E.Cz. failed to appear.

49. On 13 October 1997 the hearing was nevertheless adjourned since E.Cz. and one of the judges sitting in the trial chamber were absent. The presiding judge ordered, however, that E.Cz., on account of his repeated failure to comply with the court order, be searched for by a "wanted" notice and detained pending trial.

50. On the same day the court made the second application under Article 222 § 4 of the Code of Criminal Procedure to the Supreme Court, asking it to prolong the applicant's and Cz.S.'s detention for a further period of six months. In the reasoning, the court reiterated the grounds previously given for the applicant's detention. It further referred to the risk that he might induce witnesses to give false testimonies or to obstruct the trial by other unlawful means, and the likelihood of a heavy penalty being imposed on him. In that connection, the court stated that the applicant, when giving evidence, had refused to reveal names of certain clients of his company and stated that he would not do so unless he had considered it to be pertinent. The court next pointed out that the applicant's detention should continue because there were no special circumstances justifying his release, as defined in Article 218 of the Code of Criminal Procedure. It also stressed that it still needed to obtain voluminous evidence. In its opinion, all those above-mentioned obstacles made it impossible for it to give judgment within the terms referred to in Article 222 § 3 of the Code of Criminal Procedure.

51. On 27 October 1997 the applicant applied to the President of the Criminal Chamber of the Supreme Court, asking that he be brought to the session concerning the prolongation of his detention beyond the statutory

time-limit, so that he could present his arguments. He relied on Article 6 § 3 (c) of the Convention and a number of constitutional provisions, notably those stipulating that self-executing provisions of an international treaty took priority over domestic law. He also complained that the District Court had not served a copy of the application of 13 October 1997 on him and that, in consequence, he could not contest effectively the grounds for the prolongation his detention given by that court.

52. On 3 November 1997 the applicant received a copy of that application. On 4 November 1997 he prepared a statement addressed to the President of the Criminal Chamber of the Supreme Court and once again asked that he be brought from prison to the session concerning the prolongation of his detention. He also complained about the conduct of the presiding judge. He stressed that the judge was not fair in considering that he should be held in custody inasmuch as the trial had to be postponed only because of his released co-defendants' repeated failure to appear before the court. In that context, the applicant pointed out that the court would have avoided the delays caused by the conduct of those co-defendants if it had severed promptly the charges against them.

53. On 6 November 1997 the District Court cancelled a hearing as the Supreme Court had not yet examined the application of 13 October 1997 and had not returned the case-file.

54. On 13 November 1997 the Supreme Court held a session at which it dealt with that application. It prolonged the applicant's detention until 30 March 1998.

At the beginning of the session the Supreme Court considered the applicant's motion in which he asked it to be brought before it and allowed to present his arguments. The State Prosecutor (*Prokurator Krajowy*) was summoned to, and took part in, the session. The applicant's representative was not summoned. After having heard the Prosecutor's arguments (who opposed the motion), the Supreme Court rejected the applicant's request.

Referring to the grounds for the extension of the applicant's detention beyond the statutory time-limit, the Supreme Court held that the circumstances adduced by the District Court showed that it was likely that he would induce the witnesses to give false testimonies or otherwise obstruct the trial. It further found that, given the fact that the case was of a particular complexity and that the trial court had to obtain various evidence, the applicant should still be held in custody in order to secure the proper conduct of the trial. Lastly, the Supreme Court pointed out that despite the factors that had to date contributed to the prolongation of the trial, the District Court should nevertheless accelerate the proceedings.

55. The trial was to restart on 15 December 1997 but it was postponed to 12 January 1998 because the police had not brought E.Cz. from prison and J.S.'s counsel had not appeared before the court.

56. On 5 January 1998 the District Court dismissed the applicant's application for his detention to be lifted and replaced by another preventive measure. The court considered that the applicant should be held in custody because a severe penalty might be imposed on him. It stressed that the applicable sentence ranged from 1 to 10 years' imprisonment. It further considered that the fact that the applicant had refused to reveal the identity of some of his company's clients showed that, had he been released, he would have induced witnesses to give false testimonies or otherwise obstructed the proper course of the trial.

57. On 12 January 1998 the court cancelled a hearing because the police had not brought the applicant and E.Cz. from prison. On the same day the applicant made an application for release, asking the court to vary the preventive measure imposed on him. He maintained that his prolonged detention was putting a severe strain on himself and on his family.

58. The applicant made a further, similar application on 19 January 1998, stating that he "would be very grateful if [he] could obtain an explanation as to what for and for whom [he] was needed to be prison". He submitted two further applications in January and two in February 1998.

The court dismissed those applications on 20, 28 and 30 January, and on 6 and 18 February 1998, respectively. The reasons for those decisions were in essence identical to those given for the decision of 5 January 1998 (see paragraph 56 above).

59. On 5 February 1998 the court cancelled a hearing. On 23 February 1998 it decided to conduct the trial again from the beginning and to rehear all evidence that had so far been obtained. The presiding judge read out the records of the evidence heard from the applicant on 10 and 21 April 1997.

60. On 9 March 1998 the applicant was released pending trial.

61. On 16 December 1999 the Wrocław-Śródmieście District Court gave judgment. It convicted the applicant as charged and sentenced him to 3 years' imprisonment and a fine.

B. Censorship of correspondence

62. During his detention, the applicant received many letters, including those from his lawyers, without envelopes.

From 6 December 1995 to 21 July 1997 the applicant sent 61 letters to the Commission, of which 46 were opened and stamped "censored" (*ocenzurowano*) by the Polish authorities before being sent on.

63. On 9 February 1996 the Secretariat of the Commission sent to the applicant a letter together with an application form and the relevant enclosures. The official stamps made by the authorities indicated that the letter was delivered to Wrocław Prison on 4 March 1996, sent to the Wrocław Regional Prosecutor on 5 March 1996, and opened and censored by that prosecutor on 6 March 1996.

64. On 18 March 1996 the applicant sent a letter to the Wrocław Regional Bar Council (*Okręgowa Rada Adwokacka*). On 20 March 1996 the authorities opened the letter and stamped it “censored”.

65. In his letter of 15 April 1996 the applicant complained to the Commission that he would not be able to submit the application form within the period of six weeks referred to in the Commission's letter of 9 February 1996 because the authorities had opened and censored that letter and its delivery had been delayed. He also complained that the authorities of Wrocław prison had refused him any assistance in preparing copies of the relevant documents and that, for that reason, he could not submit the application within the prescribed time-limit. However, he filed the form on 15 March 1996. It was posted, with enclosures, on 15 May 1996. It was received at the Commission's secretariat on 24 May 1996.

66. On 14 August 1996 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment sent a letter to the applicant. On 28 August 1996 the authorities opened the letter. The envelope bears the stamp “censored”.

67. On 29 November and 2 December 1996 the applicant sent two letters to the Wrocław Court of Appeal. The envelopes were cut open. They bear the stamp “censored”.

68. On 16 January 1997 the applicant sent a letter to his wife. The authorities opened that letter and put the stamp censored on it.

69. On 27 October and 4 and 12 November 1997 the applicant submitted to the prison authorities two letters addressed to the President of the Criminal Chamber of the Supreme Court. In the letter of 27 October 1997 he asked the Supreme Court to order that he be brought to the session concerning the examination of the application for his detention to be prolonged (see paragraph 51 above). All the envelopes bear the stamp “censored”. The post-mark reveals that the letter of 27 October 1997 was sent out on 4 November 1997 and the two other letters on 25 November 1997.

70. On 27 November 1997 and on 5 January 1998 Mr Cichoń's law firm received letters from the applicant. The postmark on the envelope of the first letter is unreadable. The second letter was posted on 21 December 1997. On both envelopes there were hand-written notes made with a red marker. Those notes read: “censored”.

71. On 1 December 1997 and 16 January 1998 the applicant handed in two further letters to the President of the Criminal Chamber of the Supreme Court to the prison authorities. On both envelopes there was a hand-written note that read: “censored”. The post-marks show that the letters were sent out on 8 December 1997 and on 23 January 1998, respectively.

C. Limitations imposed on the applicant's contact with his wife

72. On 10 August 1996 the Wrocław-Śródmieście District Court ordered that the applicant should not be allowed to have any personal contact with his wife in view of the fact that in the meantime she had been charged with fraud in which the applicant had also been involved. That restriction included a prohibition of supervised family visits and of communication by a prison internal phone. Before that date their personal contact had not been restricted.

73. On 30 January 1997 the applicant requested the Wrocław District Court to grant his wife a permit to visit him in prison as they had had no personal contact since 10 August 1996. The application was dismissed on 7 February 1997 without any reasons being given.

74. On 7 February 1997 the applicant complained to the President of the Wrocław Regional Court that not only had all his letters to his wife been censored but some of them also intercepted or delayed and that he had not even been allowed to make phone calls to his wife. He submitted that these facts taken together with the absolute prohibition on any personal contact with her had amounted to inhuman treatment.

75. On 10 February 1997 the applicant unsuccessfully requested the Wrocław-Śródmieście District Court to stop the censorship of his letters to his wife.

76. On 24 March 1997 the applicant, likewise unsuccessfully, asked the court to allow his wife to visit him in prison.

77. On 11 April 1997 he made a similar application, submitting that at the hearing of 10 April 1997 the court had heard evidence from him and he had explained all the circumstances relating to his the charges laid against his wife. The court dismissed the application on 18 April 1997. No reasons for that decision were given.

78. Subsequently, on 22 and 28 April and 8, 20 and 28 May 1997 the Wrocław-Śródmieście District Court, without giving any reasons for its decisions, dismissed five further applications in which the applicant asked to be allowed to see his wife. He argued that the prolonged and drastic restrictions on their contact were cruel and inhuman and had severely affected his family life. In his application of 22 May 1997, the applicant stressed that since the court had heard evidence from his wife on 21 May 1997 (see also paragraph 41 above), there was no further justification to continue the harsh measures imposed on their personal contact. He relied on Articles 3 and 8 of the Convention.

79. On 16 June 1997 the Wrocław-Śródmieście District Court dismissed two further, similar applications made by the applicant on 5 and 12 June 1997, holding that the prohibition on any personal contact between him and his wife was justified by the risk that they might induce one another to give

false testimonies before the court or obstruct the proper course of the proceedings.

80. The applicant's wife was allowed to visit him in prison on 9 August 1997. That visit took place in the presence of the prison guard.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, in particular, detention on remand

81. 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 (“the Code”) (*Kodeks postępowania karnego*) – 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.

1. Imposition of detention on remand

82. Until 4 August 1996 (i.e. the date on which the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes (“the 29 June 1995 Law”) entered into force) at the investigation stage of criminal proceedings detention on remand was imposed by a prosecutor.

Article 210 §§ 1 and 2 of the Code (in the version applicable at the material time) stated:

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

2. A prosecutor may impose a preventive measure only with respect to a person who has been questioned in the case as a suspect. Before ordering detention on remand or deciding on bail the prosecutor shall personally hear the suspect.”

83. A detainee could, under Article 212 § 2, appeal against a detention order made by a prosecutor to the court competent to deal with his case; however, he was not entitled to be brought before the court dealing with his appeal.

2. Grounds for applying preventive measures

84. 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. That provision read:

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

85. Article 217 § 1 defined grounds for detention on remand. The relevant part of this provision, in the version applicable until 1 January 1996, provided:

“1. 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 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.

...”

On 1 January 1996 sub-paragraphs 3 and 4 of Article 217 § 1 were repealed and the whole provision was redrafted. From that date onwards the relevant sub-paragraphs read:

“(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 abode [in Poland]; or

(2) [as it stood before 1 January 1996].”

Paragraph 2 of Article 217 provided:

“If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years' imprisonment, or if a court of first instance has sentenced him to at least three years' imprisonment, the need to continue detention in order to secure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed.”

86. 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 precept 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.”

87. The provisions for “mandatory detention” (for instance, detention pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes.

88. Finally, Article 218 stipulated:

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

- (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.”

3. Prolongation of detention beyond the statutory time-limits

89. Until 4 August 1996, i.e. the date on which the relevant provisions of the Law of 29 June 1995 entered into force, the law did not set any time-limits on detention on remand in the court proceedings.

Originally, the provisions setting out time-limits for detention were to enter into force on 1 January 1996; however, their entry into force was eventually postponed until 4 August 1996.

90. Article 222 of the Code of Criminal Procedure in the version applicable after 4 August 1996 provided, 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 offences. In cases concerning serious offences [offences for the commission of which a person is liable to a sentence of a statutory minimum of at least three years' imprisonment] this period may not exceed two years.

4. In particularly justified cases the Supreme Court may, on an application made by the court competent to deal with the case, ... prolong detention on remand for a further fixed period exceeding the time-limits set out 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.”

91. On 28 December 1996, by virtue of the Law of 6 December 1996, paragraph 4 of that Article was amended and the grounds for prolonging detention beyond the statutory time-limits included also:

“... other significant obstacles, which could not be overcome by the authorities conducting the proceedings...”

92. No appeal laid in law against the Supreme Court's decision on an application made under Article 222 § 4.

In cases where the Supreme Court dismissed such an application, a detainee had to be released. As long as it had not reached a decision, an application of the relevant court – which had a form of a decision (*“postanowienie”*) – was as a basis for the continued detention.

B. Judicial authorities and prosecution

93. At the material time the relations between the authorities of the Polish State were set out in interim legislation, the Constitutional Act of 17 October 1992 (*Mała Konstytucja*). Article 1 of the Act affirmed the principle of the separation of powers in the following terms:

“The legislative power of the State shall be vested in the Sejm and the Senate of the Republic of Poland; the executive power shall be vested in the President of Poland and the Council of Ministers; and judicial power shall be vested in the independent courts.”

94. The Law of 20 June 1985 (as amended) on the Structure of Courts of Law (*Ustawa o ustroju sądów powszechnych*) in the version applicable at the material time provided, in section 1:

“1. Courts of law shall dispense justice in the Republic of Poland.

2. Courts of law shall be courts of appeal, regional courts and district courts.”

95. The Law of 20 June 1985 (as amended) on Prosecution Authorities (*Ustawa o Prokuraturze*) set out general principles concerning the structure, functions and organisation of prosecution authorities.

Section 1 of the Law, in the version applicable at the material time, stipulated:

“1. The prosecution authorities shall be the Prosecutor General, prosecutors and military prosecutors. Prosecutors and military prosecutors shall be subordinate to the Prosecutor General.

2. The Prosecutor General shall be the highest prosecution authority; his functions shall be carried out by the Minister of Justice.”

96. Chapter III of the Code entitled: “Parties to proceedings, defence counsel, representatives of the victims and representatives of society” described a prosecutor as a party to criminal proceedings. Under all the relevant provisions of the Code taken together, a prosecutor performed investigative and prosecuting functions in the course of criminal proceedings. As regards the general position of the prosecution, at the material time they were not independent from the executive since the Minister of Justice carried out the duties of the Prosecutor General.

C. Proceedings relating to the lawfulness of detention on remand

97. At the material time there were three different legal avenues enabling a detainee to challenge the lawfulness of his detention: 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 at the investigation stage and proceedings set in motion by a detainee's application for release.

As regards the last of these, Article 214 of the Code (in the version applicable at the material time) stated that an accused could at any time apply to have a preventive measure quashed or lifted. Such an application had to be decided by the prosecutor or, after the bill of indictment had been lodged, by the court competent to deal with the case, within a period not exceeding three days.

98. Under Article 88 of the Code of Criminal Procedure the presence of the parties at judicial sessions other than hearings was a matter for discretion of the court. Sessions concerning an application for release, a prosecutor's application for prolongation of detention or an appeal against a decision on detention on remand were held *in camera*. If the defendant asked for release at a hearing, the court made a decision either during the same hearing or at a subsequent session *in camera*.

99. At the material time the law did not give the detainee the right to participate in any court session concerning his detention on remand. In practice, only the prosecutor was informed of and could participate in such sessions. If he was present, he was entitled to adduce arguments before the court. The prosecutor's submissions were put on the record of the session (cf. *Wloch v. Poland*, no. 27785/95, judgment of 19 October 2000, §§ 69-73).

D. Censorship of a detainee's correspondence and rules concerning his contact with the outside world

100. Articles 82-90 of the Code of Execution of Criminal Sentences of 1969 (the Code is no longer in force; it was repealed and replaced by the "new" Code of Execution of Criminal Sentences of 5 August 1997, which entered into force on 1 September 1998) concerned the execution of detention on remand. Under Article 89 § 2 of the Code, a detainee might receive visitors in prison or might contact his family by prison internal phone provided that he had obtained permission in writing from the investigating prosecutor (at the investigation stage) or from the trial court (once the trial commenced). The authorities could order that a visit should take place in the presence of a prison guard.

101. Pursuant to the same provision, all correspondence of a detainee was, as a rule, censored, unless a prosecutor or a court decided otherwise.

There was no legal means whereby a detainee could appeal against or, in any other way, contest censoring of his correspondence or the scope of that measure (cf. *Niedbala v. Poland*, no. 27915/95, judgment of 4 July 2000, §§ 33-36).

THE LAW

I. ALLEGED VIOLATION OF THE RIGHT TO BE BROUGHT BEFORE A JUDGE, GUARANTEED UNDER ARTICLE 5 § 3 OF THE CONVENTION

102. The applicant alleged a breach of Article 5 § 3 of the Convention, submitting that his detention on remand had been ordered by the investigating prosecutor, who could not be considered a “judge” or an “officer authorised by law to exercise judicial power”.

Article 5 § 3 of the Convention, in its relevant part, provides:

“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 ...”

A. The parties' arguments

103. The applicant, relying on a number of examples from the Court's case law (in particular, the *Huber v. Switzerland* judgment of 23 October 1990, Series A no. 188, p. 18, § 43), maintained that there could be no doubt that the prosecutor who had detained him on remand had not offered guarantees of independence from the executive and the parties, as required under Article 5 § 3.

104. The Government submitted that even though it was true that the investigating prosecutor had ordered the applicant's detention, the lawfulness of that measure had later been examined by the Wrocław District Court on 5 December 1995. There had, therefore, been the necessary judicial control over the prosecutor's decision.

Moreover, given the position of a prosecutor in criminal proceedings and the fact that the prosecutors were under a general duty to remain impartial in those proceedings and that they acted as guardian of the public interest, the applicant's detention had been imposed in compliance with the requirements of Article 5 § 3 of the Convention.

B. The Court's assessment

105. The Court recalls that in a number of its previous judgments – for instance, those in the cases of *Niedbala v. Poland* (cited above, §§ 48-57) and of *Dacewicz v. Poland* (no. 34611/97, judgment of 2 July 2002, § 21 et seq.) – it has already dealt with the question whether under the Polish legislation in force at the material time a prosecutor could be regarded as a “judicial officer” endowed with attributes of “independence” and “impartiality” required under Article 5 § 3.

The Court has found that a prosecutor did not offer these necessary guarantees because the prosecution authorities not only belonged to the executive branch of the State but also concurrently performed investigative and prosecution functions in criminal proceedings and were a party to such proceedings. Furthermore, it has considered that the fact that the prosecutors in addition acted as guardian of the public interest could not by itself confer on them the status of “officer[s] authorised by law to exercise judicial power”.

106. The Court finds that the present case is similar to the above-mentioned precedents. It sees no reasons to come to a different conclusion in this case.

Consequently, it concludes that the applicant's right to be brought “before a judge or other officer authorised by law to exercise judicial power” was not respected.

107. There has therefore been a violation of Article 5 § 3 of the Convention in that respect.

II. ALLEGED VIOLATION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME OR TO RELEASE PENDING TRIAL, GUARANTEED UNDER ARTICLE 5 § 3 OF THE CONVENTION

108. The applicant further complained that his detention on remand had been inordinately lengthy and, consequently, in breach of the “reasonable time” requirement laid down in Article 5 § 3.

The relevant part of Article 5 § 3 reads:

“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. The parties' arguments

109. The applicant considered that the authorities had failed to give valid reasons for holding him in custody for the relevant period. In that context, he stressed that the main ground relied on by the courts, namely the risk of

his inducing witnesses to give false testimonies, had not been based on any concrete, true circumstance but the fact that he had not confessed his guilt. That fact should never have been held against him as he – like any defendant in criminal proceedings – had a right to make a plea of non-guilty.

110. Furthermore, the applicant argued, the likelihood that a severe penalty of imprisonment might be imposed on him could not justify the entire period of his detention, especially as the authorities had not even indicated a single piece of evidence suggesting that, had he been released, he would have absconded or evaded justice.

111. He went on to argue that the courts had never seriously considered the imposition of other, more lenient preventive measures on him, even though such alternative measures of ensuring an accused's presence at trial had explicitly been provided for by Polish law.

112. As to the conduct of the authorities, the applicant asserted that they had not shown any special diligence in handling his case. In particular, the trial had several times been adjourned because the District Court had not made arrangements securing the presence of all defendants before it.

In sum, he invited the Court to find that his right to trial or to release pending trial had not been respected.

113. The Government considered that the applicant's detention had not exceeded a “reasonable time”.

To begin with, they stressed that the applicant had been detained in connection with the offences he had committed shortly after having been released from pre-trial detention (which had lasted nearly two years) in other criminal proceedings. That indicated that it had been necessary to hold him in custody to secure the proper conduct of the proceedings.

114. There had been, the Government added, further valid grounds warranting the applicant's continued detention, such as the complexity of his case and the serious nature of the offences with which he had been charged. Also, since he had refused to reveal the names of some of his company's clients, his own conduct had made it necessary to keep him in custody to prevent the risk of his inducing witnesses to give false testimonies or otherwise obstructing the course of the trial.

115. The Government accepted that detention was not the only measure envisaged by the Code of Criminal Procedure to ensure the proper course of criminal proceedings. However, they argued that the trial court could not release the applicant on bail because his difficult financial situation had made it impossible for him to offer an appropriate security.

116. In conclusion, it was emphasised that the prolongation of the applicant's detention was a consequence of his own dilatory conduct, as shown by his numerous, manifestly unfounded challenges to the impartiality of the trial court, several applications for his officially-appointed lawyers to be replaced and appeals he had made against detention decisions.

B. The Court's assessment

1. Period to be taken into consideration

117. The applicant was detained on remand on 22 November 1995 and released on 9 March 1998 (see paragraphs 7 and 60 above). Accordingly, he spent in detention pending trial 2 years, 3 months and 16 days.

2. Reasonableness of the length of detention

118. 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 with further references, ECHR 2000-XI).

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, unreported).

119. 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.*)

120. The Court observes that in the present case the authorities first relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the need to ensure the proper conduct of the proceedings. They repeated those grounds in nearly all their decisions (see paragraphs 7, 11, 16, 20, 22, 27, 30, 34, 38-39, 54 and 56 above). They also considered that the applicant should remain in custody

because neither his health nor any other circumstance militated decisively against his being kept in detention (see paragraphs 12, 14 16 and 50 above).

121. Later, as the trial proceeded, the courts held that the severity of the anticipated sentence warranted his continued detention (see paragraphs 22, 27, 30, 34, 38-39 and 50 above). Lastly, they based their decisions on the risk that the applicant, if released, might induce witnesses to give false testimonies or otherwise obstruct the proper conduct of the trial. That risk was, in their view, justified by the fact that the applicant refused to reveal identity of certain clients of his company (see paragraphs 50, 54, 56 and 58 above).

122. The Court accepts that the suspicion against the applicant of having committed the offences with which he had been charged and the need to secure the proper conduct of the proceedings at their early stage may initially have justified his detention. However, it does not consider that those grounds, even taken with the fact that the authorities did not perceive the applicant's personal situation as decisively arguing against his being held in custody, can suffice to justify the entire period in issue.

The same holds true in respect to the likelihood that a severe sentence might have been imposed on the applicant. A hypothetical sentence ranging from 1 to 10 years' imprisonment must, with the passage of time, inevitably have called for the reassessment in the light of evidence that was progressively obtained by the court. In reality, the actual sentence, which was 3 years' imprisonment (see paragraph 61 above), was at the lower end of the applicable scale.

As regards the argument that the applicant, given his refusal to identify some clients of his company, might induce witnesses to give false testimonies, the Court notes that the courts did not indicate any concrete circumstance capable of showing that the anticipated risk went beyond a merely theoretical possibility. The Court is not, therefore, persuaded by that argument, especially as it appears that there was no indication that in reality at any earlier stage of the proceedings the applicant tampered with evidence or made any attempt to induce witnesses to perjury.

123. The Court accordingly concludes that that the reasons given to justify the applicant's detention were not "sufficient" and "relevant", as required under Article 5 § 3.

124. There has accordingly been a violation of Article 5 § 3 of the Convention in that the applicant's right to trial within a reasonable time or to release pending trial was not respected.

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

125. Relying on Article 5 § 4, the applicant complained that the proceedings relating to the lawfulness of his detention on remand had not been adversarial, as required under that provision.

Article 5 § 4 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. The parties' arguments

126. The applicant maintained that the Polish authorities had been fully aware of the fact that under criminal legislation as applicable at the material time, *habeas corpus* proceedings had not been adversarial and had therefore failed to satisfy the Article 5 § 4 requirements. In that respect, the applicant recalled the fact that the new Code of Criminal Procedure, in its Article 249 § 5, explicitly laid down that a defence counsel for an accused had to be notified of, and could take part in, a session concerning the imposition of detention on remand, the examination of an appeal against the imposition or prolongation of detention and the prolongation of that measure. He further relied on a number of the Court's judgments on the matter (e.g. the *Toth v. Austria* judgment of 12 December 1991, Series A no. 224, p. 23, §§ 83-84 and, *mutatis mutandis*, the *Belziuk v. Poland* judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 571, §§-39).

127. The Government acknowledged that no provision of the Code of Criminal Procedure of 1969 allowed an accused or his lawyer to participate in a court session concerning the examination of an application for release. That did not mean that an accused had no opportunity to present his arguments as those could have, or had already, been set out in his application for release and had been duly considered by the court.

It was true, the Government added, that the prosecutors had taken part in a number of sessions concerning the applicant's applications for release (for instance, in sessions held on 9 and 30 August, 16 September and 31 December 1996). However, that fact could not in itself be decisive for a finding that the proceedings concerning the lawfulness of the applicant's detention had been unfair. In the Government's submission, the applicant could have, and indeed had, presented arguments militating in favour of his release in writing or, if he had asked for release at a hearing, orally before the trial court.

They concluded from that that there had been no breach of Article 5 § 4 of the Convention.

B. The Court's assessment

128. The Court has already dealt with a number of Polish cases where the applicants made identical complaints about the lack of equality of arms in proceedings relating to their applications for release or to appeals against refusals to release them. In that regard, it would in particular refer to its judgments in the cases of *Niedbala v. Poland* (cited above §§ 48-57, 4 July 2000) and *Włoch v. Poland* (no. 27785/95, §§ 125-132; 19 October 2000, ECHR-2000-XI, p. 35-36; §§ 125-131), in which it has repeated the criteria established in its case-law in respect of the “fundamental guarantees of procedure applied in matters of deprivation of liberty” and has emphasised that one of the essential features of such a procedure is equality of arms between the prosecutor and the detained person.

129. In those judgments, the Court has also found that the impossibility for a detainee to attend the session of a court dealing with his detention, to respond to the prosecutor's submissions and to challenge – either himself or through his lawyer – grounds for his continued detention, an impossibility which was inherent in Polish legislation applicable at the material time, was incompatible with the requirements of Article 5 § 4.

130. The present case does not differ from the above-mentioned precedents. The applicant, despite his explicit requests for bringing him before the court, could not take part in virtually any procedure for the review of the lawfulness of detention and put forward arguments against holding him custody (see, in particular, paragraphs 9, 15, 20-23, 31, 51-52, 54 above). The fact that, as the Government argued, the applicant could make written submissions or ask for release at hearings (see paragraph 127 above), cannot, in the Court's view make up for the inherently non-adversarial nature of the review of the lawfulness of his detention.

131. There has accordingly been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF THE RIGHT TO RESPECT FOR CORRESPONDENCE GUARANTEED UNDER ARTICLE 8 OF THE CONVENTION

132. The applicant also complained under Article 8 of the Convention that all his correspondence, including the letters to and from the lawyer representing him before the Commission and the Court, as well as the letters he sent to or received from the Commission, had been opened and censored and, in some instances, intercepted or delayed.

The relevant part of Article 8 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.”

A. The parties' arguments

133. The applicant stressed that the relevant legislation had given the authorities a virtually unlimited power to interfere with his correspondence. He maintained that, even assuming that the authorities had intended to secure the proper conduct of the criminal proceedings in his case, the duration of that measure, as well as its scope and nature had by no means been necessary in a democratic society. The need to achieve the aim pursued by the authorities had not required them to read all his letters, notwithstanding whether they had been of strictly personal or of official character. In particular, there had been no reason whatsoever to open and read his correspondence to the lawyer representing him before the Commission and the Court, as such letters were privileged under Article 8 of the Convention.

The applicant concluded that his right to respect for his correspondence had been violated.

134. The Government submitted that during the criminal proceedings against the applicant his correspondence had been censored pursuant to Article 89 § 2 of the 1969 Code of the Execution of Criminal Sentences. However, the application of that measure had not involved any interference with the text of his letters and had not caused any delay in the delivery of his mail to the addressees.

135. The Government also underlined that there had been a particular reason to censor the applicant's correspondence with his wife because she had been charged in the same case. The authorities had therefore had to take steps to ensure the proper conduct of the trial and to eliminate the risk of them acting in collusion.

136. In conclusion, the Government considered that the censorship complained of had been carried out in compliance with Polish law and was justified under paragraph 2 of Article 8 of the Convention.

B. The Court's assessment

137. The Court observes that the Government did not contest the fact that during the applicant's detention the authorities had routinely opened and censored his correspondence to all addressees, including the courts dealing with his case, the Commission and the lawyer representing him in the proceedings before the Court. That measure, they added, had been applied

in accordance with Article 89 § 2 of the Code of the Execution of Criminal Sentences of 1969 (see paragraph 134 above).

It is, accordingly, common ground that in the present case there was an “interference by a public authority” with the applicant's right to respect for his correspondence, within the meaning of Article 8 § 2 of the Convention.

138. The Court further observes that in the above-mentioned case of *Niedbala* it has already examined the question whether an interference with a detainee's correspondence effected under the relevant domestic provision could be considered as being imposed “in accordance with the law” and in compliance with other requirements under Article 8 (see the *Niedbala v. Poland judgment* cited above, §§ 81-84). The Court found that it could not, holding as follows:

“81. ... Polish law, as it stood at the material time (see §§ 34 and 35 above), allowed for automatic censorship of prisoners' correspondence by the authorities conducting criminal proceedings. Thus, the applicable provisions did not draw any distinction between the different categories of persons with whom the prisoners could correspond. Consequently, also the correspondence with the Ombudsman was subject to censorship. Moreover, the relevant provisions had not laid down any principles governing the exercise of this censorship. In particular, they failed to specify the manner and the time-frame within which it should be effected. As the censorship was automatic, the authorities were not obliged to give a reasoned decision specifying grounds on which it had been effected.

82. In the light of the foregoing considerations, the Court concludes that Polish law as it stood at the material time, did not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of control of prisoners' correspondence. It follows that the interference complained of was not “in accordance with the law”.

83. Having regard to the foregoing conclusion, the Court does not consider it necessary in the instant case to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with.

84. Consequently, the Court concludes that there has been a violation of Article 8 of the Convention.”

139. The Court finds that the present case raises the same issue as that of *Niedbala* (see paragraphs 100-101 and 134 above). The only difference that the Court sees is the extent of the interference with the applicant's right to respect for his correspondence, which in this case was substantially bigger.

140. There has accordingly been a violation of Article 8 of the Convention.

V. ALLEGED VIOLATION OF THE RIGHT TO RESPECT FOR FAMILY LIFE, GUARANTEED UNDER ARTICLE 8 OF THE CONVENTION

141. The applicant also submitted that, on account of enduring and drastic restrictions imposed by the trial court on his personal contact with his wife, his right to respect for his family life had been violated.

Article 8, in its relevant part, provides:

“1. Everyone has the right to respect for his ... family life ...

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.”

A. The parties' arguments

142. The applicant argued that the restrictions in issue had been of a particularly severe nature and, as they had been combined with the censorship of the letters he had written to his wife, had made impossible for him to maintain any form of communication with her. Those restraints had moreover been applied for a very long time and without any consideration having been given to the possibility of enabling them to see each other in the presence of a prison guard.

In conclusion, the applicant asked the Court to find a violation of Article 8 of the Convention in that his right to respect for his family life had been violated.

143. The Government maintained that the restrictions on the applicant's personal contact with his wife had been applied in accordance with domestic law and that they had been necessary to ensure the proper conduct of the applicant's trial, in particular to eliminate the risk of his acting in collusion with his wife. They further submitted that when that risk had been lessened, i.e. when the court had heard evidence from the applicant and his wife, they had eventually been allowed to meet in the presence of the prison guard.

In view of the foregoing, the Government were of the opinion that the fact that the applicant had temporarily been deprived of personal contact with his wife had not given rise to a violation of Article 8 of the Convention.

B. The Court's assessment

1. General principles

144. The Court reiterates that detention, likewise any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see, *mutatis mutandis*, *Messina v. Italy (no.2)* no. 25498/94, § 61, 28 September 2000, unreported).

Such restrictions as limitations put on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision (*ibid.* §§ 62-63; see also *X v. the United Kingdom*, no. 8065/77, Commission decision of 3 May 1978, Decisions and Reports 14, p. 246).

Nevertheless, any restriction of that kind must be applied “in accordance with the law”, must pursue one or more legitimate aims listed in paragraph 2 and, in addition, must be justified as being “necessary in a democratic society”.

As to the latter criterion, the Court would further reiterate that the notion of “necessity” for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. Assessing whether an interference was “necessary” the Court will take into account the margin of appreciation left to the State authorities but it is a duty of the respondent State to demonstrate the existence of the pressing social need behind the interference (see, among other examples, *McLeod v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2791, § 52; and *Płoski v. Poland*, no. 26761/95, § 35, 12 November 2002, unreported).

2. Application of the above principles to the present case

(a) Existence of interference

145. The Government did not contest before the Court that the restrictions on the applicant's personal contact with his wife constituted an “interference” with his family life (see paragraph 143 above). The Court sees no reason to hold otherwise.

(b) Whether the interference was “in accordance with the law”

146. The Court notes that the contested measure was applied under Article 89 § 2 of the 1969 Code of Execution of Criminal Sentences (see paragraph 100). It consequently holds that the interference was “in accordance with the law”.

(c) Whether the interference pursued a “legitimate aim”

147. The Government maintained that the restrictions in issue had been necessary in order to secure the proper conduct of the criminal proceedings against the applicant, in particular, to eliminate the risk of the applicant and his wife acting in collusion.

The Court notes that the limitations on the applicant's contact with his wife were imposed after she had been charged with a related offence and on the grounds that there was a risk that they might induce each other to give false testimonies or obstruct the proper course of the trial (see paragraphs 72-79 above). The impugned measure can, accordingly, be considered as having been taken in pursuance of “the prevention of disorder and crime”, which is a legitimate aim under Article 8.

(d) Whether the interference was “necessary in a democratic society”

148. It remains for the Court to ascertain whether the authorities struck a fair balance of proportionality between, on the one hand, the need to secure the process of obtaining evidence in the applicant's case and, on the other, his right to respect for his family life while in detention (see paragraph 144 above).

149. The Court observes at the outset that the applicant was forbidden to have any contact with his wife on 10 August 1996. That restriction involved the prohibition to communicate with her by a prison internal phone or to receive supervised family visits. It was maintained until 9 August 1997, i.e. for 1 year (see paragraphs 72-80 above). At the same time, their correspondence was censored, pursuant to the same provision which allowed for the limitations on their contact, i.e. Article 89 § 2 of the 1969 Code of Execution of Criminal Sentences (see paragraphs 74-75 and 100-101 above).

150. The Court accepts that, initially, the resort to that measure could be considered reasonably necessary from the point of view of the aims sought by the authorities, even though it inevitably resulted in harsh consequences for the applicant's family life.

However, with the passage of time and given the severity of those consequences, as well as the authorities' general obligation to assist the applicant in maintaining contact with his family during his detention, the situation called, in the Court's opinion, for a careful review of the necessity of keeping him in a complete isolation from his wife.

151. In that regard, the Court notes that the District Court did not give grounds for any but the first and the last of its numerous decisions refusing the applicant to see his wife (see paragraphs 72-79 above). Nor did that court consider any alternative means of ensuring that their contact would not lead to any collusive action or otherwise obstruct the process of taking evidence, such as, for instance, subjection of their contact to supervision by a prison officer (see paragraphs 72-79 and 100 above) or to other restrictions as to the nature, frequency and duration of contact (see, a contrario, *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR-2001 ...).

Furthermore, the Court finds that the court heard evidence from the applicant's wife on 21 May 1997 but it maintained the prohibition of their personal contact for nearly 3 further months, despite the fact that during that time it did not proceed to obtain any evidence and the trial was adjourned (see paragraphs 41-43 and 78-80 above).

152. In the circumstances, and having regard to the duration and the nature of the restrictions on the applicant's contact with his wife as well as to the fact that they were combined with the censorship of their correspondence, the Court concludes that they went beyond what was necessary in a democratic society "to prevent disorder and crime". Indeed, the measure in question reduced the applicant's family life to the degree that can be justified neither by the inherent limitations involved in detention nor by the pursuance of the legitimate aim relied on by the Government. The Court therefore holds that the authorities failed to maintain a fair balance of proportionality between the means employed and the aim they sought to achieve.

3. Conclusion

153. There has, accordingly, been a violation of Article 8 of the Convention in regard to the applicant's right to respect for his family life.

VI. THE ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

154. Lastly, the applicant alleged that the censorship of his correspondence constituted a breach of Poland's obligation under Article 34, which reads:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' arguments

155. The applicant maintained that the very fact of opening and reading his letters and his application to the Commission showed that Poland had not respected the obligations undertaken under former Article 25 of the Convention, which was incorporated in its present Article 34.

156. The Government considered that the alleged censorship of the applicant's correspondence did not amount to a breach of Poland's obligations under that provision. They submitted that the applicant's correspondence with the Commission had not been held back by the authorities beyond the necessary time. There had moreover been no interference with the contents of his application or letters he had written to the Commission.

B. The Court's assessment

157. The Court takes note of the fact that, except for the censoring of his correspondence in itself, the applicant did not allege any particular interference with his right of individual petition by the Polish authorities. Nor did he claim that the authorities put any restrictions on his communicating freely with the Commission or, subsequently, the Court. Furthermore, save the applicant's initial, but eventually dispelled, doubts whether he would be able to file his application in good time (see paragraph 65 above) he did not allege that the authorities had committed any direct or even indirect act designed to dissuade or discourage him from pursuing his Convention claims.

158. Having regard to its conclusion in paragraph 140 above, where the Court has found that the censorship of the applicant's correspondence constituted a violation of Article 8, the Court sees no cause to deal separately with the accompanying, but in its substance identical, complaint under Article 34.

159. It consequently holds that no separate issue arises under Article 34 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. 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

161. Under the head of pecuniary damage, the applicant claimed a sum of 44,500 Polish zlotys (PLN) [approx. EUR 10,800] for loss of earnings caused by his lengthy detention.

He also asked the Court to award him PLN 100,000 [approx. EUR 24,200] for moral suffering and distress resulting from a violation of his Convention rights. In that regard, the applicant in particular referred to anxiety and stressed he suffered because of his isolation from his wife and interference with his correspondence.

162. The Government considered that the sums in question were inordinately excessive. They requested the Court to rule that the finding of a violation would constitute in itself 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.

163. The Court's conclusion, on the material before it, is that the applicant has failed to show 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.

164. On the other hand, the Court accepts that the applicant certainly suffered non-pecuniary damage – such as distress and frustration resulting from his protracted detention, from the prolonged impossibility of having contact with his wife and from the nature and scope of interference with his correspondence – 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 13,000 euros under this head.

B. Costs and expenses

165. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of PLN 36,000 [approx. EUR 8,700] for costs and expenses incurred in the proceedings before the Court.

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

167. The Court has assessed the claim in the light of the principles laid down in its case-law (*Kudła v. Poland* judgment cited above, § 168).

168. Applying the said criteria to the present case and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant 5,500 euros for his costs and expenses together with any value-added tax that may be chargeable, less the 762 euros received by way of legal aid from the Council of Europe.

C. Default interest

169. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention (right to be brought promptly before a judge);
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention (right to trial within reasonable time or release pending trial);
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 8 of the Convention (right to respect for correspondence);
5. *Holds* that there has been a violation of Article 8 of the Convention (right to respect for family life);
6. *Holds* that no separate issue arises under Article 34 of the Convention;
7. *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, EUR 13,000 (thirteen thousand euros) in respect of non-pecuniary damage and EUR 5,500 (five thousand five hundred euros) in respect of costs and expenses, less EUR 762 (seven hundred sixty two euros) received from the Council of Europe, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts;
[Rectified on 8 September 2003. The phrase “to be converted into Polish zlotys at the rate applicable at the date of settlement” was missing in the former version of the judgment.]
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President