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

FOURTH SECTION

CASE OF D.P. v. POLAND

(Application no. 34221/96)

JUDGMENT

STRASBOURG

20 January 2004

FINAL

20/04/2004

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 D.P. v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 16 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 34221/96) 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, D.P. ("the applicant"), on 2 September 1996. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court). The proceedings in the application were conducted simultaneously with the application no. 38816/97.

2. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki.

3. The applicant alleged, in particular, a breach of Article 5 §§ 1 and 3 and Article 34.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 12 November 2002 the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1965 and lives in Opole, Poland.

1. The applicant's pre-trial detention and the criminal proceedings against him

(a) The arrest

10. On 16 June 1995 the applicant was taken into custody by the police. On 17 June 1995 the Wrocław Regional Court *(Sąd Wojewódzki)* dismissed his complaint about placing him in police custody.

11. On 17 June 1995 the Wrocław Regional Prosecutor *(Prokurator Wojewódzki)* charged the applicant with aggravated fraud and remanded him in custody. The charges related to a period between 30 January and 3 March 1995 when the applicant, together with his accomplices, allegedly defrauded several individuals and businesses by obtaining from them under false pretences cash, automobiles, furniture, computers and other goods of a total value of PLN 1,050,000. In addition, the applicant was charged with possession of a forged passport. The Regional Prosecutor considered that the applicant's detention on remand was warranted by the fact that he was charged with several criminal acts which caused a significant danger to society *(stopień społecznego niebezpieczeństwa jest znaczny)*, as he had acted within a criminal organisation and had obtained valuable goods. In addition, the applicant's criminal activity took place over a long time and it was probable that if released he would collude and try to destroy evidence.

12. On 10 July 1995 the applicant applied to the Wrocław Regional Prosecutor for release from detention. On 12 July 1995 the Regional Prosecutor rejected the application. He dismissed as unsubstantiated the applicant's claims that poor health and the financial situation of his family required his release. Moreover, the applicant's contention that his ill-health called for release would be decided after a panel of medical experts had examined him.

13. On 24 and 26 July 1995 the applicant again made applications to the Wrocław Regional Prosecutor for release from detention. On 26 July 1995 his requests were dismissed. The Regional Prosecutor relied on a medical opinion issued by the Wrocław Prison Hospital, which stated that the

applicant could remain in detention. In addition, he considered that since the applicant's daughter and his cohabitee lived with the latter's parents, there was no need for him to be released to care for them.

14. On 2 August 1995 the applicant made an application for release from detention. On 4 August 1995 the Wrocław Regional Prosecutor rejected his application. The prosecutor referred to the medical opinion of 19 July 1995, which confirmed that the applicant's state of health allowed the continuation of his detention. Furthermore, he considered that the fact that the applicant's daughter had recently received medical treatment in the infant pathology ward of the Wrocław Regional Hospital did not constitute a ground for the applicant's release. The prosecutor also pointed out that the applicant's cohabitee cared for his daughter.

15. On 9 August 1995 the Wrocław Appellate Prosecutor dismissed the applicant's appeal against the Regional Prosecutor's decision of 26 July 1995. The Appellate Prosecutor considered that the evidence showed that the applicant had committed the criminal offences with which he was charged. Moreover, the state of health of his daughter did not require that he be released. The prosecutor was also of a view that the applicant's detention was necessary to ensure the proper course of the proceedings.

16. On 23 August 1995 the applicant lodged with the Wrocław Court of Appeal *(Sąd Apelacyjny)* a complaint about his detention. On 31 August 1995 the court transmitted it to the Wrocław Regional Prosecutor to consider it as a request to change the preventive measure applied to the applicant. On 1 September 1995 the prosecutor rejected the request. He dismissed as unsubstantiated the applicant's claims that his own state of health as well as that of several members of his family required his release from detention. In this connection, the prosecutor referred to medical opinions, which stated that the applicant was neither mentally ill nor retarded and that his detention would not cause any risk to his health and life. Furthermore, he considered that the investigation of the applicant's claim that his detention constituted a hardship for his family had showed that it was unsubstantiated.

17. On 6 September 1995 the Wrocław Regional Court allowed the request submitted by the prosecution service and extended the applicant's detention on remand until 30 November 1995. The court considered that the evidence collected in the case sufficiently supported the charges laid against the applicant. It also relied on a significant danger to society caused by the criminal offences in question and the necessity to ensure the proper course of criminal proceedings. Furthermore, the court pointed out that the investigation of the case would have to be continued in order to clarify the applicant's role in the commission of the criminal offences and to identify individuals who would be charged with receiving stolen goods from the applicant. Finally, the court considered that the applicant's case did not disclose any of the grounds for release from detention listed in Article 218

of the Code of Criminal Procedure, i.e. danger to the detainee's life or health and extreme hardship caused to either the detainee or his family. On 6 October 1995 the Wrocław Court of Appeal dismissed the applicant's appeal against the decision of the Regional Court.

(b) The bill of indictment

18. On 30 December 1995 the Wrocław Regional Prosecutor filed with the Wrocław Regional Court a bill of indictment against the applicant.

19. On 31 January 1996 the applicant asked the Wrocław Regional Court to release him from detention. On 5 February 1996 the court dismissed his request. It relied on a significant danger to society caused by the criminal offences with which the applicant was charged and the evidence on which they were based. The court was also of the view that the applicant's family did not suffer hardship which would justify his release.

20. On 15 February 1996 the applicant again filed an application for release but on 22 February 1996 the Wrocław Regional Court rejected it. On 29 February 1996 the Wrocław Court of Appeal dismissed the applicant's appeal against that decision. The court observed that the applicant could apply for bail.

21. On 7 March 1996 the Wrocław Regional Court rejected the application for release filed by the applicant on 26 February 1996. On 1 April 1996 the court rejected the application lodged on 19 March 1996.

22. On 19 April 1996 the applicant made a further application to the Wrocław Regional Court for release from detention. On 25 April 1996 the court dismissed his application. It referred to the previous court decisions refusing his requests for release. Moreover, the court considered that the claim that the applicant's father suffered hardship was unsubstantiated.

(c) The hearings

23. The date of the first hearing was fixed for 15 April 1996. However, it was cancelled because one of the defendants was ill and could not attend it.

24. On 16 May 1996 the applicant made an application to the Wrocław Regional Court for release from detention. On 30 May 1996 the court dismissed his request. It relied on a significant danger to society caused by the criminal offences with which the applicant was charged and the evidence on which they were based. The court further considered that the applicant's detention was necessary to secure the proper conduct of criminal proceedings. In addition, it observed that the applicant's failure to pay child support did not warrant his release, as one of his children was in receipt of child support payments from the Child Support Fund *(Fundusz Alimentacyjny)*.

25. On 31 June 1996 the Regional Court held a hearing. It was adjourned because two defendants failed to attend it.

26. On 8 July 1996 the applicant made an application to the Wrocław Regional Court for release from detention. On 15 July 1996 the court rejected his request. It relied on the grounds for continuing the applicant's detention listed in previous court decisions.

27. On 5 August 1996 the applicant asked the Wrocław Regional Court to release him from detention. On 8 August 1996 the court dismissed his request. It considered that the evidence collected in the case sufficiently supported the charges laid against the applicant. As the charges could lead to a severe prison sentence, there was a risk of absconding. Furthermore, the court was of the view that the applicant's inability to provide care to his children over a long period of time did not result in exceptional hardship for his family.

28. On 12 August 1996 the Wrocław Regional Court dismissed the applicant's application for release from detention filed on 6 August 1996. The court relied on the evidence collected in the case, which in its opinion supported the charges laid against the applicant. In addition, it considered that the prospect of a severe penalty, which could be imposed on the applicant, could prompt him to abscond.

29. On 19 August 1996 the Vice-President of the Wrocław Court of Appeal informed the Ministry of Justice and the applicant that the applicant's case did not disclose that the proceedings had taken unreasonably long. In particular, he pointed out that thirteen individuals were accused in the case, the case file consisted of seventeen volumes and evidence had to be taken from fifty-eight witnesses. Furthermore, the Vice-President observed that the first hearing had been cancelled because one of the defendants had been ill. The second hearing had been adjourned until 30 August 1996 as two defendants had failed to attend it. Finally, he stated that "the judge rapporteur is dealing with twenty-five other cases and therefore is not able to decide this case sooner than is possible".

30. On 30 August 1996 the Regional Court held a hearing. It was adjourned because some of the defendants failed to attend it.

31. On 3 September 1996 the Wrocław Court of Appeal allowed the applicant's appeal against the Regional Court's decision of 8 August 1996 rejecting his application for release from detention. The appellate court quashed the impugned decision and instructed the trial court to reconsider the applicant's request. It acknowledged that "in the present case the detention on remand has lasted quite long". In addition, the appellate court considered that the trial court's statement on the applicant's intention to abscond was not precise enough. As the applicant's detention had already lasted sixteen months and as he was not charged with a serious offence, the mere reference to the possibility that the applicant could abscond because of the prospect of a severe penalty was not sufficient. The appellate court also observed that the trial court had not considered whether another preventive measure could replace the applicant's detention on remand.

32. On 12 September 1996 the Wrocław Regional Court dismissed the applicant's four applications for release submitted in August and September 1996. The court considered that the charges against the applicant were sufficiently supported by the evidence. Moreover, the difficulties in finding the applicant's place of residence during the investigative stage of the proceedings and the prospect of a severe penalty showed that he could go into hiding if released from detention. The court further noted that the applicant could not be released on bail as he had stated that he had no funds to pay it. Finally, it considered that there was no evidence pointing towards the existence of any of the grounds for release provided for by Article 218 of the Code of Criminal Procedure.

33. The hearing held on 13 September 1996 was adjourned until 27 September 1996 as some of the defendants failed to attend it because of ill health.

34. During the hearing held on 27 September 1996 the Wrocław Regional Court rejected the applicant's application for release from detention. The hearing was adjourned because some of the defendants failed to attend it.

35. On 7 October 1996 the Wrocław Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 12 September 1996. The appellate court observed that the applicant's release would delay the proceedings, as his cohabitee lived in Opole. It also noted that the applicant had contributed to the delay in the proceedings because on numerous occasions he had submitted requests and appeals. In addition, on several occasions a case file had been transmitted from the trial court to the Wrocław Detention Centre after the applicant had asked to consult it.

36. On 17 October 1996 the Wrocław Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 27 September 1996. The appellate court referred to previous court decisions rejecting his applications for release from detention. The court further noted that although the length of the applicant's detention could be worrying *(trwa już niepokojąco długo)*, it had not been caused by the inactivity of the trial court. Moreover, the appellate court recommended that "more energetic steps" be taken to expedite the proceedings. Finally, it acknowledged that the state of health of the applicant's cohabitee and his daughter was not good. However, the court was of the view that the applicant's release would not contribute to the improvement of their health.

37. In a letter of 23 October 1996 the President of the Wrocław Regional Court advised the applicant that the trial court could not be blamed for the delay in the proceedings. He pointed out that the court had fixed numerous hearings, which had been adjourned because of the absence of defendants who had been ill.

38. During the hearing held on 25 October 1996 the applicant applied for bail. He proposed that the bail be set at PLN 2,000. However, the

Wrocław Regional Court rejected the application. It gave the following reasons for its decision:

> "The circumstances raised by the accused in his application have already been considered by both the Regional Court and the Court of Appeal. Therefore, taking into account the fact that no new circumstances have taken place, it should be assumed that the reasons for continuing detention on remand have not ceased to exist."

39. During the hearing held on 12 December 1996 the Wrocław Regional Court rejected the applicant's application for release from detention. The hearing was adjourned because some of the defendants failed to attend it.

40. On 31 December 1996 the Wrocław Regional Court decided to request the Supreme Court *(Sąd Najwyższy)* to extend the applicant's detention on remand.

41. On 7 January 1997 the Wrocław Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 12 December 1996. The appellate court recalled that during the preceding ten months it had been considering on a monthly basis the applicant's appeals against the trial court's refusals to release him. It considered that the factual and legal circumstances concerning the applicant's detention had not changed.

(d) The Supreme Court extends the applicant's detention

42. On 24 January 1997 the Supreme Court allowed the Regional Court's request and extended the applicant's detention on remand until 24 July 1997. It considered that the prolongation of the applicant's detention was justified by the evidence, the possibility that he could go into hiding and the complexity of the case. It also observed that the delay in the proceedings was caused by the behaviour of defendants who had failed to attend hearings.

The Supreme Court further reflected on the legality of the applicant's detention between 1 and 24 January 1997. The relevant part of the court's reasoning may be summarised as follows:

> The Supreme Court, noting that the application was filed on 31 December 1996 but posted as late as 13 January 1997, first considered what was the proper date of 'lodging' such an application for the purposes of Article 222 § 4 of the Code of Criminal Procedure.
>
> The Supreme Court next observed that, depending on the answer to this question, it would have to determine the legal consequences of a potential failure on the part of the Wrocław Regional Court to respect the rule laid down in Article 10 (a) § 2 of the Interim Law of 1 December 1995, which stated that in cases where no request for a further prolongation of detention on remand had been 'lodged', the detention on remand had to be lifted and the person concerned released not later than on 1 January 1997.
>
> The Supreme Court considered that it should also deal with the question of whether it was competent to rule on the application if it had been 'lodged' after the expiry of

the term referred to in Article 10 (a) of the Interim Law of 1 December 1995, i.e. after 1 January 1997.

Referring to the first question, the Supreme Court held that the proper date of 'lodging' an application under Article 222 § 4 of the Code of Criminal Procedure had to be deemed either the date of posting the request or the date of submitting it to the registry of the Supreme Court since to hold otherwise would mean leaving a detainee without any guarantee that the Supreme Court was properly supervising his detention. Moreover, if the requesting court was not bound by any time-limits for submitting its application, detention, the most severe among the preventive measures, might continue for an unspecified and unlimited time outside the Supreme Court's supervision. In consequence, an application under Article 222 § 4 of the Code of Criminal Procedure, a mere 'proposal' to continue detention, would, for all practical purposes, transform into a basis for continuing detention. Clearly, that was not the intention of the legislator.

The Supreme Court therefore concluded that since in the applicant's case no application for a further prolongation of his detention was 'lodged' before 1 January 1997, the applicant's (and his co-defendants') detention from that date to the date of its present decision lacked any legal basis and was, accordingly, unlawful.

It went on to find that it was, nevertheless, competent to deal with the application lodged outside the relevant date. It considered that a lower court's obligation to release a detainee in case of its failure properly to lodge an application under Article 222 § 4 of the Code of Criminal Procedure was one thing, but its right to make such an application at any time was another. In the Supreme Court's opinion, the application in question should be deemed a "fresh application" and be examined as such.

43. On 28 January 1997 the Wrocław Regional Court held a hearing.

44. On 10 February 1997 the President of the Wrocław Court of Appeal informed the applicant that his complaints about his unjustified detention on remand were unsubstantiated. The President also recalled that on 24 January 1997 the Supreme Court had prolonged the applicant's detention and that no hearings could be held in his case at the time when the Supreme Court had been considering the request to extend his detention. In addition, he observed that the next hearing was scheduled for 17 March 1997.

45. On 24 February 1997 the Wrocław Regional Court dismissed as unsubstantiated the applicant's challenge to one of the judges considering his case.

46. On 17 March 1997 the Wrocław Regional Court held a hearing. It was adjourned because some of the defendants failed to attend it.

47. During the hearings held on 17 April and 28 May 1997 the Wrocław Regional Court dismissed the applicant's applications for release from detention. The latter hearing was adjourned because some of the defendants failed to attend it.

48. The hearing held on 8 July 1997 was adjourned because some of the defendants did not attend it.

49. During the hearing held on 8 September 1997 the Wrocław Regional Court decided to sever the charges laid against three co-defendants and to

consider them in separate proceedings because the co-defendants' numerous failures to attend hearings resulted in the delay in deciding the applicant's case. Thereafter, the proceedings were continued against the applicant and eight co-defendants.

50. The next hearings were held on 13, 28 October and 25 November 1997. The hearing scheduled for 18 November 1997 was cancelled.

51. On 19 December 1997 the hearing was held before the Regional Court. It decided to request the Supreme Court to prolong the applicant's detention on remand.

52. On 15 January 1998 the Supreme Court extended the applicant's detention on remand until 31 March 1998.

53. During the hearing held on 30 January 1998 the Regional Court rejected the applicant's requests that the charges against him be decided in separate proceedings and that he be released from detention.

54. On 3 and 17 March 1998 hearings took place before the trial court.

(e) The end of pre-trial detention

55. On 20 March 1998 the applicant was released from detention.

56. Subsequently, hearings were held on 17 April, 15 May, 5 June, 2 July, 3 September, 6 October, 30 November and 1 December 1998.

57. In the course of 1999 the Wrocław Regional Court held hearings on the following dates: 5 January, 4 February, 11 March, 14 April, 7 and 28 May, 9 June, 7 September, 29 October and 15 December. The hearings held on 7 September and 29 October 1999 were adjourned because a judge was ill.

58. On 14 January 2000 the court held a hearing.

59. During the hearings held between 25 November 1997 and 14 January 2000 the Wrocław Regional Court took evidence from more than fifty witnesses.

(f) The conviction

60. On 21 January 2000 the Wrocław Regional Court convicted the applicant and sentenced him to five years and six months' imprisonment and to a fine. On 14 April 2000 the applicant appealed against his conviction.

61. On 24 August 2000 the Wrocław Court of Appeal dismissed the applicant's appeal.

2. The opening of the applicant's letter to the European Court of Human Rights

62. On 24 October 2000 the Court received the applicant's letter of 9 October 2000. The front of the envelope in which the letter was delivered bears a stamp in Polish: "Opole Detention Centre, Ward III, Received on 09.10.2000." On the back of the envelope there is a stamp in Polish: "Censored. Opole, 19.10.2000". The top edge of the envelope is sealed with Sellotape. The envelope is postmarked 19 October 2000.

II. RELEVANT DOMESTIC LAW

1. Amendments to Polish criminal legislation

63. Over the period to which the facts of the present case relate, i.e. from March 1995 to the beginning of 1999, Polish criminal legislation was amended on several occasions.

In so far as the present case is concerned, there were two relevant amendments to the Code of Criminal Procedure ("the 1969 Code"), a law which is no longer in force as it was repealed and replaced by the so-called "New Code of Criminal Procedure" of 6 June 1997 ("the 1997 Code"), which entered into force on 1 September 1998.

The first such amendment was made by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes which entered into force on 1 January 1996, except the amendments relating to the imposition of detention on remand (in particular, those stating that only a judge was empowered to detain a suspect on remand); the entry into force of the latter amendments being postponed until 4 August 1996 (see below).

The second amendment, effected by the Law of 1 December 1995 on Amendments to the Law of 29 June 1995 ("the 1995 Interim Law") came into force on 1 January 1996. Section 10(a) of the Law introduced special interim rules governing the prolongation of detention on remand beyond the statutory time-limits laid down in Article 222 §§ 2 and 3 of the 1969 Code in cases where such detention had been imposed before 4 August 1996 (see below, 2 c) "Statutory time-limits for detention on remand").

2. Preventive measures, in particular detention on remand

64. At the material time the 1969 Code listed as "preventive measures" (*środki zapobiegawcze*), *inter alia*, detention on remand, bail and police supervision.

(a) Imposition of detention on remand

Article 210 § 1 of the 1969 Code read (in the version applicable until 4 August 1996):

> "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."

Article 222 (in the version applicable until 4 August 1996) stated, in so far as relevant:

> "1. The prosecutor may order detention on remand for a period not exceeding three months.
>
> 2. When, in view of the particular circumstances of the case, the investigation cannot be terminated within the period referred to in paragraph 1, detention on remand may, if necessary, be prolonged by:
>
> (1) the court competent to deal with the case, upon the prosecutor's request, for a period not exceeding one year;
>
> (2) the Supreme Court, upon request of the Prosecutor General, for a further fixed term required to terminate the investigation."

Under Article 212 § 2 a detainee could 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 judge dealing with his appeal.

(b) Grounds for applying preventive measures

65. Article 209 of the 1969 Code set out general grounds justifying imposition of preventive measures. That provision (as it stood at the material time) provided:

> "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."

Article 217 § 1 defined grounds for detention on remand. That provision, in the version applicable until 1 January 1996 provided, in so far as relevant:

> "Detention on remand may be imposed if:
>
> (1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when 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 conduct 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 paragraphs (3) and (4) were repealed. From that date on that provision 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 then read:

"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."

66. The 1969 Code set out the margin of discretion as to maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand, the most extreme among the preventive measures, 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 therefor 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 these measures, are considered adequate."

The provisions of the Code providing for "mandatory detention" (for instance, pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June 1995 referred to above.

Finally, Article 218 provided:

"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."

(c) Statutory time-limits for detention on remand

67. Until 4 August 1996, i.e. the date on which the relevant provisions of the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes entered into force, the law did not set out any time-limits on detention on remand in court proceedings; it did so only in respect of the investigative stage (see above, 2a) Imposition of detention on remand; Article 222 in the version applicable until 4 August 1996).

Article 222 of the 1969 Code 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 was liable to a sentence of a statutory minimum of at least 3 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 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."

68. 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..."

However, as already mentioned (see paragraph 63 above), under section 10 (a) of the 1995 Interim Law, different rules applied to persons whose detention on remand started prior to 4 August 1996. That section provided:

> "1. In cases where the total period of detention on remand which started prior to 1 August 1996 exceeds the [maximum] time-limits referred to in Article 222 §§ ... and 3 of the Code of Criminal Procedure [as amended by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes], the accused shall be kept in detention until the Supreme Court gives a decision on an application for prolongation of his detention under Article 222 § 4 of the Code of Criminal Procedure.
>
> 2. In cases mentioned in paragraph 1, if no [such] application has been lodged, detention shall be lifted not later than 1 January 1997."

In cases where the Supreme Court dismissed an application under Article 222 § 4, a detainee had to be released. As long as it had not given its ruling, the application of the relevant court – which had the form of a

decision (*"postanowienie"*) – was deemed to be a legal basis for the continued detention.

3. Severance of charges

69. Article 24 § 1 of the 1969 Code read, in so far as relevant:

> "1. The court competent to deal with the charges laid against a principal offender shall be competent to determine the charges laid against all his accessories and/or other persons, if the offence[s] committed by the latter are closely related to that [or those] committed by a principal offender [and] if the criminal proceedings against [all of them] are pending simultaneously.
>
> 2. The cases of persons referred to in paragraph 1 shall be joined in the same proceedings;
>
> 3. In cases where circumstances have rendered a joint determination of all the charges referred to in paragraphs 1 and 2 difficult [the court] may sever a specific charge [or charges] from the case ... ."

A first-instance court could, either of its own motion or on an application made by a party, make a severance order at any time.

4. Offence of aggravated fraud

70. That offence, until 1 September 1998, was defined in Article 205 § 2 (1) of the Criminal Code of 1969, which provided:

> "Anyone who has committed aggravated fraud shall be liable to a sentence ranging from one to ten years' imprisonment."

On 1 September 1998 the Criminal Code of 1969 was repealed by the so-called "New Criminal Code" of 6 June 1997 and, from then on, the offence of aggravated fraud has been defined by Article 294 § 1 read in conjunction with Article 286 § 1 of the New Criminal Code; the potential sentence still ranges from one to ten years' imprisonment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

71. The applicant complained that his detention on remand between 1 and 24 January 1997 was unlawful. This complaint falls under Article 5 § 1 of the Convention, which in so far as relevant provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

A. Arguments before the Court

72. The applicant claimed that his detention between 1 and 24 January 1997 was unlawful as there was no decision authorising it.

73. The Government submitted that they "take due note of the position of the Supreme Court presented in its decision of 24 January 1997 that the applicant's detention from 1 to 24 January 1997 was unlawful under Polish law".

B. The Court's assessment

74. The Court notes that it is undisputed that the Supreme Court found that the applicant's detention from 1 to 24 January 1997 lacked any legal basis and was accordingly unlawful (see paragraph 42 above). Neither the factual basis for that finding nor the finding itself were contested by the Government (see paragraph 73 above).

75. According to the Supreme Court, the Regional Court's application for the applicant's detention to be prolonged was lodged outside the relevant time-limit, in breach of section 10(a) of the 1995 Interim Law. It thus follows that the applicant's detention during the period in question was contrary to national law (see paragraphs 42 and 68 above).

76. Consequently, his deprivation of liberty was not "lawful" under the terms of Article 5 § 1 of the Convention, (cf. *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2819, § 46).

There has therefore been a violation of that provision in the present case.

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

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

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

78. The Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

79. It was common ground between the parties that the applicant's pre-trial detention began on 16 June 1995 and ended on 20 March 1998. The Court sees no reason to hold otherwise. It follows that the period to be taken into consideration lasted about two years and nine months.

B. The reasonableness of the length of detention

1. Arguments before the Court

80. The applicant claimed that he was not tried within a reasonable time in breach of Article 5 § 3.

81. The Government submitted that the applicant's detention was justified by a reasonable suspicion that he had committed the offences with which he was charged and by their significant danger to the society. In addition, they averred that at the initial stage of the proceedings there had existed a risk that the applicant would obstruct the collection of evidence.

82. The Government also submitted that the applicant posed a risk of absconding. Moreover, his case was complex and the offences with which he was charged carried a severe sentence. The applicant's health and the situation of his family did not call for his release.

2. The Court's assessment

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

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

84. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of

innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

85. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, p. 138, §§ 152-153, ECHR 2000-IV).

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

86. The Court considers that the applicant's detention was initially justified by reasonable suspicion that he had committed the offence with which he was charged. It will therefore proceed to ascertain whether the other grounds given by the judicial authorities continued to justify the depravation of liberty.

87. The Court notes that already on 17 October 1996 the Wrocław Court of Appeal considered that the length of the applicant's detention was worrying. However, the Regional Court's decision of 25 October 1996 rejecting an application for bail and the Court of Appeal's decision of 7 January 1997 rejecting an application for release did not examine the facts arguing for or against continuing the applicant's detention but merely referred to previous decisions rejecting applications for release (see paragraphs 36, 38 and 41 above). Moreover, it appears from the submissions made by the parties that none of the decisions rejecting applications for release lodged after the Supreme Court's decision of 24 January 1997 was based on "relevant" and "sufficient" grounds.

88. It follows that domestic authorities failed to give "relevant" and "sufficient" grounds to justify the continuing deprivation of liberty. There has therefore been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

89. The applicant complained that the opening of his letter to the Court breached Article 34, which provides:

> "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."

90. The Government disagreed. They submitted that the applicant's correspondence was not delayed and that there was no interference with the content of the letter. The applicant did not suffer any prejudice in the presentation of his application to the Court.

91. The Court first reiterates that it is of importance to respect the confidentiality of its mail since it may concern allegations against the prison authorities or prison officials. The opening of letters from the Court or addressed to it undoubtedly gives rise to the possibility that they will be read and may also conceivably, on occasions, create the risk of reprisals by the prison staff against the prisoner concerned (see, in respect of a complaint under Article 8 concerning correspondence with the Commission, *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233 p. 22, § 62).

92. Turning to the facts of the present case, the Court notes that the applicant's letter was delivered without delay and that there was no interference with its content (see paragraph 62 above). The Court considers that, in the particular circumstances of the present case, the applicant was in no way hindered in the exercise of his right of petition to the Court (see *Valašinas v. Lithuania*, no. 44558/98, § 136, ECHR 2001-VIII).

93. There has accordingly been no violation of Article 34.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

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

A. Pecuniary damage

95. The applicant sought an award of PLN 700,000 to compensate him for the financial loss he suffered on account of his unlawful detention between 1 and 24 January 1997. He explained that on 30 December 1996 he had signed an agreement with a certain Mr S. B. which required him to prepare a strategy for the development of a company owned by Mr S. B.

In this connection, the applicant submitted a four-page hand-written document, which in his submission was the original of the agreement. It was dated 30 December 1996 and provided that the applicant was required to inspect the company's manufacturing facility between 2 and 17 January 1997 and that he was to be paid PLN 600,000 for his services over the

period of five years. Moreover, paragraph 10 of the agreement stated that it would expire if the applicant was not released from pre-trial detention on 1 January 1997.

96. The applicant submitted that the award sought by him for pecuniary damage included PLN 600,000 for an unpaid fee and PLN 100,000 for "other losses" resulting from the expiry of the agreement.

97. The Government's comments on the applicant's claims were not included in the case file for the consideration of the Court as they were submitted more than three months after the time-limit.

98. Leaving aside the question of the veracity of the document submitted by the applicant, the Court observes that the applicant's claim for pecuniary damage is mostly based on lost business opportunities which are speculative in nature and relate to an agreement allegedly concluded while he was held lawfully in pre-trial detention. It cannot inquire into what the outcome would have been of the applicant's dealings with Mr S.B. if he had not been detained unlawfully from 1 to 24 January 1997. The Court accordingly dismisses the claim (see *Podbielski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII, p. 3398, § 44).

B. Non-pecuniary damage

99. The applicant also sought an award of PLN 200,000 for non-pecuniary damage. He maintained that any award smaller than the amount claimed by him would prompt domestic authorities to abuse the right to liberty.

100. The Government's comments on the applicant's claims were not included in the case file for the consideration of the Court as they were submitted more than three months after the time-limit.

101. The Court considers that the applicant suffered non-pecuniary damage on account of the unlawfulness and protracted length of his detention, which is not sufficiently compensated by the finding of a violation of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000.

C. Costs and expenses

102. The applicant did not make a claim under this head.

D. Default interest

103. 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 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been no violation of Article 34 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President