



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

FOURTH SECTION

CASE OF G.K. v. POLAND

(Application no. 38816/97)

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 G.K. 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. PAVLOVSKI,

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. 38816/97) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr G.K. ("the applicant"), on 4 June 1997. 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).

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw, Poland. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, Ms S. Jaczewska, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a breach of Article 5 § 1 of the Convention in that his detention from 1 to 24 January 1997 had been unlawful and a breach of Article 5 § 3 in that his detention pending trial had been unreasonably lengthy. He also argued that he had had no legal means to challenge the lawfulness of keeping him in custody from 1 to 24 January 1997. Under Article 6 § 1 the applicant complained that his right to have a hearing within a reasonable time had been violated. He further alleged that the authorities had violated his right to respect for correspondence guaranteed under Article 8. Lastly, the applicant maintained that the authorities had interfered with his right of individual petition, in breach of Article 34 of the Convention.

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

5. The application was allocated to the former 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 remainder of the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber have decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1967 and lives in Wrocław, Poland.

A. Criminal proceedings against the applicant

10. On an unknown date in 1995 the Wrocław District Prosecutor (*Prokurator Rejonowy*) issued a warrant to search for the applicant by “wanted” notice on suspicion of his having committed fraud.

11. On 3 March 1995 the police arrested the applicant under that warrant.

12. On 10 March 1995 the applicant was brought before the Wrocław Stare Miasto District Prosecutor (*Prokurator Rejonowy*). The prosecutor charged him with several counts of aggravated fraud and ordered that he be remanded in custody until 2 June 1995. The detention order was based on Articles 210 § 1 and 217 § 1(2) and (4) of the Code of Criminal Procedure. As to the grounds for the applicant’s detention, the prosecution first relied on the reasonable suspicion that he had committed the offence with which he had been charged. They also considered that the offence in question represented a serious danger to society (*wysoki stopień społecznego niebezpieczeństwa czynu*) and considered that there was a risk that the applicant might induce witnesses to give false testimony or obstruct the criminal proceedings against him by other unlawful means.

13. On 26 May 1995, on an application made by the Wrocław District Prosecutor, the Wrocław-Śródmieście District Court (*Sąd Rejonowy*) prolonged the applicant’s detention until 31 August 1995 in view of the

reasonable suspicion that he had committed the offence with which he had been charged and the serious nature of that offence. The court also found that, in the light of the material collected in the investigation, there was a high risk that the applicant would obstruct the proper conduct of the proceedings. Finally, the court held that the interests of the investigation, such as the need to obtain and secure evidence, militated in favour of keeping him in custody.

14. Subsequently, the Wrocław Regional Prosecutor (*Prokurator Wojewódzki*) took over the investigation from the District Prosecutor.

15. On 24 August 1995 the Wrocław Regional Court (*Sąd Wojewódzki*), on an application made by the Wrocław Regional Prosecutor, prolonged the applicant's detention until 30 November 1995, finding that it was necessary because there was a reasonable suspicion that the applicant had committed the serious offence. Furthermore, the court found that the need to secure the proper conduct of the proceedings militated against releasing him since, at the current stage of the investigation, it was necessary to hear evidence from all the injured parties, to carry out confrontations between witnesses and defendants and to lay further charges of dealing in stolen goods against several other persons who had not to date been involved in the proceedings.

16. On 24 November 1995, on the subsequent application from the Wrocław Regional Prosecutor, the Wrocław Regional Court prolonged the applicant's detention until 31 December 1995, holding that there was a reasonable suspicion that he had committed the serious offence with which he had been charged. The court also stressed that the applicant should be kept in custody in order to secure the proper conduct of the proceedings, especially as the charges originally laid against the suspects needed to be supplemented.

17. On 27 December 1995 the Wrocław Regional Prosecutor completed the investigation and, on 30 December 1995, lodged a bill of indictment with the Wrocław Regional Court. The applicant was indicted on several counts of aggravated fraud. The bill of indictment comprised charges against 13 co-defendants. The prosecution asked the court to hear evidence from 9 expert witnesses and 104 lay witnesses, and to consider 400 pieces of documentary evidence.

18. The first hearing was to be held on 15 April 1996. Yet it was eventually cancelled because one of the applicant's co-defendants, who had already been released under police supervision, was absent.

19. Subsequently, between 15 April 1996 and 28 August 1997, the Wrocław Regional Court listed 12 hearings for various dates but cancelled all of them because several of the applicant's co-defendants who had already been released under police supervision had repeatedly failed to appear before it. They had submitted medical certificates to the effect that they could not participate in the trial because of their poor health and asked the court to adjourn the proceedings.

20. During that time the applicant made numerous unsuccessful applications for release on bail or under police supervision. He submitted that even though his detention pending trial had exceeded any reasonable limits, not a single hearing on the merits had so far been held. He also asked the Regional Court to order, under Article 24 § 3 of the Code of Criminal Procedure, that the charges against the released co-defendants be severed from the case so as to ensure that the trial proceeded without any further impediment.

21. In the meantime, on 31 December 1996, the Wrocław Regional Court had released A.A., one of the thirteen co-defendants, under police supervision. From then on, only the applicant and two other co-defendants (D.P. and W.K.) were still kept in detention pending trial.

22. On the same day the Regional Court held a session *in camera* at which the Regional Prosecutor was present. It made an application under Article 222 § 4 of the Code of Criminal Procedure to the Supreme Court (*Sąd Najwyższy*), asking it to prolong the applicant's and his two co-defendants' detention for six further months. That application was prepared in view of the fact that on 1 January 1997 the amendments to the Code of Criminal Procedure were to take effect. The new provisions set statutory time-limits for detention pending trial and, in consequence, in all cases where detention had already exceeded, or was about to exceed, the relevant terms, the courts had either to release the person concerned or to ask the Supreme Court to prolong his detention (see also "B. Relevant domestic law and practice" below).

The reasons for the Regional Court's application read, in so far as relevant:

"[In respect of the applicant and two other co-accused] the [maximum] time-limits for detention on remand laid down in Article 222 § 3 of the Code of Criminal Procedure have expired and 31 December 1996 is the deadline for lodging a request for further prolongation of their detention on remand.

During the period following the date on which the bill of indictment was lodged with this court, it scheduled numerous hearings; however, the trial has not yet begun as this court, for valid reasons [such as the fact that the defendants, one after another, had failed to appear before us,] could not proceed with the trial. In this connection, this court has, in accordance with the suggestion of the Wrocław Court of Appeal, considered whether it would be sensible to sever the charges laid against the co-defendants concerned, pursuant to Article 24 § 3 of the Code of Criminal Procedure. Yet, as all the charges in the present case are interrelated, this court finds that there is no just cause to proceed in this way.

The detained defendants have repeatedly asked this court to lift or vary the preventive measure imposed on them. This court has dismissed their applications and in doing so it has had [particular] regard to the serious nature of the offences, the likelihood that a severe penalty would be imposed and, more particularly, to the conduct of the defendants during the investigation, that is to say [the fact that they had had to be] searched for by a "wanted" notice and that there had been problems in the

course of their arrest [which had justified the risk that] they might go into hiding. The [Wrocław] Court of Appeal, which has dealt with the defendants' appeals [against decisions refusing to release them], expressed the same opinion.

That being so, and there being other serious obstacles [to the proper course of the trial] the present application for the defendants' detention to be prolonged must be submitted to the Supreme Court."

23. The application was posted to the Supreme Court on 13 January 1997.

24. On 24 January 1997, a panel of three judges, sitting *in camera* as the Criminal Chamber of the Supreme Court, after obtaining oral comments from the State Prosecutor (*Prokurator Krajowy*), who had been summoned to the session and represented the prosecution, dealt with, and granted, the application. The Supreme Court prolonged the applicant's and his co-defendants' detention "from 24 January 1997 to 24 July 1997". The defendants were not present. Nor were they legally represented since, under Polish law as it stood at that time, defendants or their counsel were not entitled to participate in court sessions held *in camera* (see also paragraphs 65-66 below).

25. The Supreme Court's decision contained exhaustive reasons, the relevant part of which 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.

It considered that further prolongation of the applicant's detention was necessary. In essence, it repeated the arguments adduced by the Wrocław Regional Court and stressed the complexity of the case.

26. On 9 July 1997 the Wrocław Regional Court made another application under Article 222 § 4 of the Code of Criminal Procedure. It asked the Supreme Court to prolong the applicant's, W.K.'s and D.P.'s detention until 31 December 1997. The Regional Court submitted that regardless of its consistent efforts to proceed with the trial, it could not begin the main hearing because several released co-accused had repeatedly failed to appear before it. However, the applicant had to be kept in custody since there was still a risk that he might go into hiding because at the initial stage of the proceedings he had had to be searched for by a "wanted" notice and, likewise his two detained co-defendants, had obstructed his arrest. Finally, the court relied on the complexity of the case and the fact that evidence gathered in the investigation sufficiently supported the charges laid against him.

27. In the meantime, in July and August 1997, the applicant repeatedly complained to the Wrocław Regional Prosecutor, the Wrocław Regional Court, the Supreme Court, the Minister of Justice and the Ombudsman (*Rzecznik Praw Obywatelskich*) that, from 1 to 24 January 1997, he had been kept in detention without any legal basis. He also asked for release.

28. On 28 August 1997 a panel of three judges, sitting *in camera* as the Criminal Chamber of the Supreme Court, after obtaining oral comments from the State Prosecutor, prolonged the applicant's, W.K.'s and D.P.'s detention pending trial until 31 December 1997. The Supreme Court fully upheld the arguments adduced by the Wrocław Regional Court in its application. However, it expressed the opinion that, for the sake of the proper conduct of the trial, the charges against the released co-defendants should be severed from the case.

29. On 8 September 1997 the Wrocław Regional Court held the first hearing. It did not deal with the merits of the case but ordered that the charges against three of the released co-defendants be severed from the case and adjourned the trial until 13 October 1997. The applicant asked for release. The court refused, holding that the reasons for his continued detention, as cited in the Supreme Court's decision of 28 August 1997, were still valid.

30. In August, September and October 1997 the applicant sent numerous petitions, letters and applications to, *inter alia*, the Minister of Justice, the Supreme Court, the Ombudsman, the Wrocław Regional Court, the Wrocław Regional Prosecutor and the Wrocław District Prosecutor. He complained about the unlawfulness and length of his detention, the slow conduct of his trial and asked the authorities to release him and to institute criminal proceedings against the persons who had kept him in unlawful custody. He invoked Article 5 § 4 of the Convention, submitting that he had no remedy whereby he could challenge the lawfulness of his detention from 1 to 24 January 1997 and obtain release. He also relied on Article 5 § 3 of the Convention and maintained that his right to trial within a reasonable time or to release pending trial was not respected.

31. On 15 September 1997 the applicant made an application for release to the Wrocław Regional Court. He asserted that there was no risk of his going into hiding. He admitted that it was true that, nearly three years previously and before he had been detained, he had used a false identity card. However that single fact could not justify holding him in custody for such a long time. At that point, he added, his detention had already exceeded thirty months. The applicant further complained that there had been an exceptional delay in the proceedings which, in his opinion, had resulted solely from the fact that the Regional Court had failed to ensure the presence of the released co-defendants at the trial. He also maintained that, following his arrest, there had been no single attempt on his part to obstruct the proper course of the proceedings. In his view, there was no evidence whatsoever to demonstrate that, had he been released, he would have evaded justice or any sentence that might be imposed.

32. That application was dismissed on 9 October 1997. The Regional Court repeated the reasons previously given to justify the applicant's detention. It was stressed that he should be kept in detention to secure the proper conduct of the proceedings. Moreover, the court considered that the applicant had failed to adduce any arguments militating in favour of his release. On 13 October 1997 the court cancelled a hearing since one of the released co-defendants had failed to appear before it and submitted a medical certificate stating that he was ill.

33. On 28 October 1997 the Wrocław Regional Court held the first hearing on the merits. Since some of the co-defendants decided not to give any oral evidence at the trial stage, the court read out the record of evidence given by them in the investigation.

34. The next hearing was to be held on 18 November 1997 but was cancelled because one of the released co-defendants had submitted a medical certificate stating that he was ill.

35. On 20 November 1997 the Regional Court, at the Minister of Justice's request, submitted to the Ministry a report on the progress of the proceedings. Further similar reports were submitted on 23 and 30 March, 25 May, 26 August and 9 December 1998.

36. On 25 November 1997 the court held a hearing and had the record of evidence taken from other five co-defendants in the investigation read out. The court then started to hear witnesses. After hearing evidence from two of them, it adjourned the trial in order to hear six other witnesses.

37. In the meantime, in November 1997, the applicant had again filed several petitions with the Ombudsman, the Minister of Justice and the Division of Judicial Supervision (*Wydział Wizytacyjny*) of the Wrocław Regional Court. He complained that the overall period of his detention had meanwhile amounted to nearly thirty-three months but the determination of the charges against him had merely begun. He asked the authorities concerned to react, in an appropriate manner, to the fact that he had been unlawfully detained in January 1997, a fact that had already been confirmed by the highest national court.

38. On 11 December 1997 the Wrocław Regional Court dismissed a further application for release which had been filed by the applicant on an unknown date. The court held that all the legal and factual grounds previously given for his detention were still valid. It also considered that since there were no circumstances justifying release, as listed in Article 218 of the Code of Criminal Procedure, his detention should continue to ensure the proper conduct of the proceedings.

39. On 19 December 1997 the court held a hearing. It heard evidence from three witnesses and adjourned the trial until 30 January 1998 because other witnesses had not appeared.

40. On the same day the Regional Court made a fresh, and third, application under Article 222 § 4 of the Code of Criminal Procedure to the Supreme Court, asking for the applicant's, D.P.'s and W.K.'s detention to be prolonged until 31 March 1998. It stressed that it had eventually been able to begin the trial. It considered that, given that evidence had already been taken from all the co-defendants, it could not be said that the court had not handled the case efficiently. While it was true that the process of obtaining evidence had not come to an end, that was not due to any fault on the part of the trial court but had arisen out of other factors. There were still valid reasons justifying the defendants' continued detention, notably the

well-founded suspicion that they had committed the offences with which they had been charged and the risk that they might abscond or go into hiding.

41. From 19 December 1997 to the beginning of January 1998 the applicant filed numerous petitions with the Minister of Justice, the Supreme Court and the Wrocław Regional Court, submitting that his constitutional right to personal liberty, as well as his rights secured by Article 5 §§ 3 and 4 of the Convention, had been violated. He maintained that he had spent nearly three years in detention because the trial court had – wrongly – concluded that there was a risk of his absconding even though, after his arrest, there had never been a single basis for such a finding. Whatever his arguments, the court had never believed him and never given him a chance to prove that his release would not have obstructed the course of the trial. In fact, the applicant claimed, the proper conduct of the proceedings had constantly been impeded by his seven released co-defendants.

42. On 15 January 1998 a panel of three judges, sitting *in camera* as the Criminal Chamber of the Supreme Court, after obtaining oral comments from the State Prosecutor, prolonged the applicant's, W.K.'s and D.P.'s detention until 31 March 1998. The Supreme Court fully upheld the reasons given by the Wrocław Regional Court to justify its application.

43. On 30 January 1998 the Wrocław Regional Court held a hearing but the trial was again adjourned since, in the applicant's words, "one of the defence counsel [had] left the courtroom".

44. On 20 March 1998 the court released the applicant, D.P. and W.K. under police supervision. In its decision, the court conceded that the period of nearly three years that the applicant had spent in detention had been nearly as long as the anticipated penalty and that, in consequence, his continued detention would amount to serving a sentence of imprisonment.

45. Between 20 March 1998 and 4 February 1999 the Regional Court held eleven hearings. At the hearings held on 30 November and 1 December 1998 the court heard evidence from thirty-one witnesses. On 5 January 1999 the court heard fifteen witnesses. The applicant twice failed to appear before the court.

46. Further hearings were held on 4 February, 11 March, 14 April, 7 and 28 May and 9 June 1999. During that time the court heard evidence from 8 witnesses and read out records of evidence taken from 11 witnesses.

47. At a hearing held on 15 December 1999 the court heard evidence from 3 witnesses and read out records of evidence taken from 5 witnesses. The trial continued on 14 and 21 January 2000.

48. On 21 January 2000 the Regional Court gave judgment. It convicted the applicant as charged and sentenced him to 4 years and 6 months' imprisonment and a fine. The applicant did not appeal against his conviction. Accordingly, the judgment became final on 29 January 2000.

B. The control of the applicant's correspondence with the Court

49. On 16 January 2001 the Court's registry received the applicant's declaration of means filed on 12 December 2000. It was delivered in an envelope bearing two stamps. The first of them read:

“Wrocław Remand Centre – Department of Records and Employment.

Received on [handwriting] 2000-12-13. No. 651/099”

The second stamp read “cenzurowano” (censored).

The envelope itself bore traces of opening after being sealed: its right side had been cut open and then resealed with six white self-sticking paper slips.

It was postmarked 8 January 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Amendments to criminal legislation

50. 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.

51. 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 paragraphs 53-54 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 paragraph 62 below).

B. Rules governing detention on remand

1. Preventive measures, in particular detention on remand

52. 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

53. 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.”

54. 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.”

55. 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

56. 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.”

57. 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.”

58. 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.”

59. 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 therefore 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

60. 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).

61. 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.”

62. 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 51 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.”

63. 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.

(d) Proceedings for determination of the lawfulness of detention on remand

64. 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 1969 Code stated that an accused could at any time apply to have a preventive measure lifted or varied. 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.

65. Under Article 88 of the 1969 Code the participation 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*.

66. At the material time the law did not give the detainee the right to participate – either himself or through his counsel – in any court session concerning his detention on remand. In practice, only the prosecutor was notified of, and could participate in, those 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 (see also *Włoch v. Poland*, no. 27785/95, judgment of 19 October 2000, §§ 69-73).

67. Under all the relevant provisions read together a detainee was entitled to appeal against any decision prolonging his detention on remand, regardless of whether it had been made at the investigative or trial stage. However, no appeal laid in law either against a decision whereby the trial court applied, under Article 222 § 4, for prolongation of detention beyond the statutory time-limit, or against a decision of the Supreme Court prolonging detention under that provision.

Under the present criminal legislation (as amended on 20 July 2000), a detainee may appeal against a decision whereby a trial court has asked the higher court to prolong his detention beyond the statutory terms.

C. Censorship of correspondence

68. Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) of 1 September 1998.

Article 103 of that Code, which is contained in Chapter IV entitled “Rights and duties of convicted persons”, provides as follows:

“Convicted persons, their counsel, representatives and the relevant non-governmental organisations have a right to lodge complaints with institutions set up by international treaties ratified by the Republic of Poland concerning the protection of human rights. In those cases, correspondence of persons deprived of their liberty shall be sent to the addressee without delay and shall not be censored.”

69. Provisions relating to the execution of detention on remand (Articles 207-223) are contained in Chapter XV entitled “Detention on remand”.

Article 217 § 1 reads, in so far as relevant:

“... a detainee’s correspondence shall be censored by [the authority at whose disposal he remains], unless the authority decides otherwise.”

Pursuant to Article 214 § 1,

“Unless exceptions are provided for in the present Chapter, a detainee shall enjoy at least the same rights as are secured to a convicted person serving a sentence of imprisonment under the ordinary regime in a closed prison. No restrictions shall be applied to him except such as are necessary to secure the proper conduct of criminal proceedings, to maintain order and security in a remand centre and to prevent demoralisation of detainees.”

70. Article 242 § 5, which is contained in Chapter XXI entitled “Definitions”, provides:

“The prohibition of censorship shall also mean the prohibition of acquainting oneself with the content of a letter.”

THE LAW

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

71. The applicant complained that his detention, in so far as it had continued after 31 December 1996, had been unlawful. He alleged a breach of Article 5 § 1 of the Convention which, in its relevant part, 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; ...”

1. The applicant's submissions

72. The applicant referred, first, to the Supreme Court's decision of 24 January 1997 and submitted that it had explained in plain terms why keeping him in custody after 31 December 1996 had been unlawful and, consequently, incompatible with Article 5 § 1. He also argued that there had been no grounds, as listed in Article 222 § 4 of the Code of Criminal Procedure, to extend his pre-trial detention beyond that date.

73. In conclusion, the applicant invited the Court to find a violation of Article 5 § 1 of the Convention.

2. The Government's submissions

74. The Government opposed that contention and maintained that there had been no breach of that provision.

To begin with, they asserted that there had been valid grounds for keeping the applicant in custody, such as the well-founded suspicion that he had committed the offence in question and the serious nature of that offence.

They also stressed that throughout the period after 31 December 1996 the applicant's detention had had an adequate legal basis, in particular in the form of the Supreme Court's decisions on prolongation of that measure.

75. While the Government admitted that that the Supreme Court had considered that there had been no legal basis for holding the applicant in detention from 1 to 24 January 1997, they pointed out that the same court had nevertheless found that his detention should be prolonged under Article 222 § 4 of the 1969 Code.

That being so, the Government concluded that the applicant's pre-trial detention, in so far as it had continued after 31 December 1996, had been "lawful" within the meaning of Article 5 § 1.

3. *The Court's assessment*

76. 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 25 above). Neither the factual basis for that finding nor the finding itself were contested by the Government (see paragraph 73 above)

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 25 and 62 above).

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 further alleged a breach of Article 5 § 3 of the Convention in that his pre-trial detention had been inordinately lengthy. That provision reads, in so far as relevant:

"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."

1. *The applicant's submissions*

78. The applicant stressed that he had spent more than 3 years in pre-trial detention. In his view, such a lengthy period of detention of a person presumed to be innocent was in itself incompatible with Article 5 § 3. He went on to argue that, however strong was the suspicion against him, it could suffice as a basis for holding him in custody only at an early stage of the proceedings.

As regards the risk of his absconding, the applicant considered that it had not been based on any reliable evidence and that, with the passage of time, it had become irrelevant from the point of view of the proper conduct of the trial.

79. The applicant also maintained that the Regional Court had organised the trial badly and had repeatedly failed to ensure the presence of the

released defendants before it. Moreover, even though in reality the proceedings had not progressed at all only because of their conduct, the court had put the onus of that on him and had consistently refused all his applications for his detention to be lifted or replaced by another, less severe measure. In the applicant's submission, his release would not have upset the proper course of the trial and such means as bail or police supervision would have secured his presence before the court without putting on him a severe strain involved in detention.

For these reasons, the applicant asked the Court to find that his right to "trial within a reasonable time or to release pending trial" had been violated.

2. The Government's submissions

80. The Government submitted that the applicant had been remanded in custody in view of the strong suspicion that he had committed aggravated fraud. It was true that he had spent about 3 years in detention pending trial, which might *prima facie* appear to have been an excessive period. However, having regard to the fact that during that entire time the suspicion of his having committed a serious offence and the risk of his absconding had persisted and that the authorities had not failed to act with due diligence, the Government considered that the requirements of Article 5 § 3 had been satisfied.

3. The Court's assessment

(a) Period to be taken into consideration

81. The Court observes that the period of the applicant's detention to be considered under Article 5 § 3 started on 3 March 1995, when the applicant was arrested on suspicion of having committed fraud, and ended on 20 March 1998, when he was released pending trial (see paragraphs 11 and 44 above). It accordingly lasted 3 years and 17 days.

(b) Reasonableness of the period in question

(i) General principles

82. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered 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, *Kudla v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

Under Article 5 § 3 the national judicial authorities must ensure that 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 a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

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 (see, for instance, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) *Application of the above principles to the present case*

83. The authorities gave several grounds for the applicant’s detention. They first of all relied on a reasonable suspicion that he had committed the serious offence with which he had been charged. As the investigation continued, they added that the applicant should be kept in custody in order to secure the proper conduct of the proceedings, in particular the process of obtaining evidence. At the trial stage, the courts held that the severity of the anticipated penalty warranted his detention. They also considered that the fact that the applicant had been searched for by “wanted” notice at the initial stage of the investigation and, thereby, obstructed his arrest, justified a fear that, once released, he might abscond or go into hiding (see paragraphs 12-13, 15-16, 22, 25 *in fine*, 26, 29, 32, 38, 40 and 42).

84. The Court accepts that the suspicion against the applicant of having committed the serious offence may initially have warranted his detention. It also accepts that the need to ensure the proper conduct of the proceedings justified keeping him in custody at least as long as evidence had not been secured, especially as before having been arrested the applicant had to be searched for by “wanted” notice.

However, with the passage of time those grounds inevitably became less and less relevant. In particular, given the absence of any other further attempt on the part of the applicant to obstruct the proceedings, it is difficult to accept that the single fact that he was arrested following a search for him could justify the risk of his absconding or going into hiding for the entire 3 years and 17 days that he spent in custody. Indeed, the authorities did not point to any other factor capable of showing that the risk relied on actually existed.

It moreover appears that in the court proceedings the applicant’s detention no longer served the purpose of securing their proper conduct.

Holding him in custody does not seem to have helped the Regional Court to proceed with obtaining evidence as, in reality, the main obstacle to the progress of the trial was his co-defendant's conduct, namely, their repeated absence at hearings (see paragraphs 19, 22, 26 and 32 above).

85. The Court would further observe that during the entire period of the applicant's pre-trial detention, the authorities did not envisage the possibility of imposing on the applicant other measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraphs 12-13, 15-16, 22, 25 *in fine*, 26, 29, 32, 38, 40, 42 and 59 above).

In that context, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see the *Jabłoński v Poland* judgment cited above, § 83).

Given that the applicant's trial could not begin for a long time due to events which were in no way related to his behaviour, the authorities should either have considered the application of such alternative measures or at least have explained in their decisions why those other means would not have ensured that the trial followed its proper course.

86. In the circumstances, the Court concludes that the grounds stated in the impugned decisions were not sufficient to justify the applicant's being kept in detention for 3 years and 17 days.

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

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

87. The applicant maintained that he could not take any proceedings to contest the prolongation of his detention under Article 222 § 4 of the 1969 Code, and, consequently, to obtain release from his unlawful detention between 1 and 24 January 1997. He relied on Article 5 § 4 of the Convention, which states:

“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.”

1. The applicant's submissions

88. In the applicant's submission, at the material time there had been no procedure satisfying the requirements of Article 5 § 4 and enabling him to

appeal against, or otherwise contest, first, the Regional Court's decision of 31 December 1996 and, second, the resultant Supreme Court's decision on prolongation of the measure, pursuant to Article 222 § 4 of the 1969 Code. He added that that evident gap in legislation had subsequently been eradicated by the 20 July 2000 Amendment to the 1997 Code which, from that date on, provided that a detainee had a right to appeal against a decision whereby a trial court asked for his detention to be prolonged beyond the maximum time-limits prescribed by law.

2. *The Government's submissions*

89. The Government did not plead that at the material time there had been any specific remedy enabling a detainee to contest the application of Article 222 § 4 of the 1969 Code. They nevertheless considered that the applicant, in order to challenge the lawfulness of his detention during the impugned period should have applied for release under Article 214 of that Code.

3. *The Court's assessment*

(a) **General principles**

90. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).

91. While Article 5 § 4 guarantees no right, as such, to an appeal against decisions ordering or extending detention – as it speaks of "proceedings" and not of appeals – a domestic procedure relating to those matters must, in order to be compatible with that provision, satisfy two indispensable conditions. First, the judicial procedure followed must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Second, it must give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question.

Although depending on the nature of detention those guarantees necessarily differ, in cases where it falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Ječius v. Lithuania*, no. 34578/97, § 100, ECHR 2000-IX; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, with further references).

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

92. The procedure for the prolongation of the applicant's detention was based on Article 222 § 4 of the 1969 Code, under which detention that exceeded the relevant statutory period laid down in paragraph 3 of that provision could, on an application from the trial court, be prolonged by the Supreme Court. Such an application took the form a decision which, as long as the Supreme Court had not given its ruling, served as a basis for the continued detention (see paragraphs 61-63 above).

In the present case the Regional Court made the application for the extension of the applicant's detention at a session held *in camera*. The Regional Prosecutor took part in that session but neither the applicant nor his counsel participated. Under the law as then in force, the applicant could not appeal against the Regional Court's decision. Nor was he entitled to participate, either himself or through his lawyer, in the Supreme Court's session at which it dealt with the Regional Court's application. In contrast, the State Prosecutor participated in the session and was asked to make his oral comments (see paragraphs 22-24 and 67 above).

93. Thus, at no stage of the procedure for the prolongation of his detention beyond the statutory term could the applicant, or his counsel, be present before, and heard by, the courts dealing with the matter. Nor was he able to react, orally or in writing, to the prosecutor's submissions or contest the grounds for his continued detention given by the Regional Court. The lack of any procedure enabling him to challenge the lawfulness of keeping him in custody throughout the impugned period was inherent in Polish legislation applicable at the material time (see paragraphs 65-67).

94. The Government maintained that, despite the lack of any specific remedy to contest the application of Article 222 § 4 of the 1969 Code, the applicant could have challenged the legality of holding him in custody after 1 January 1997 by making an application for release under Article 214 of the 1969 Code (see paragraph 89 above).

However, the Court observes that that at the material time Polish legislation did not provide any guarantee that such an application would be examined in a procedure ensuring the principle of equality of arms. Indeed, at the material time a detainee had no right to participate in court sessions concerning his detention on remand (see paragraph 66 above). Consequently, even if the applicant had had recourse to that remedy, it would not have enabled him to have the lawfulness of his detention examined in a procedure satisfying the requirements of Article 5 § 4 of the Convention.

There has accordingly been a breach of that provision.

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

95. The applicant also complained about the length of his trial and alleged a breach of Article 6 § 1 of the Convention. That Article reads, in so far as relevant:

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

1. The applicant's submissions

96. The applicant submitted that the trial at its initial stage had not progressed at all. For nearly 2 years following the lodging of the bill of indictment no hearing on the merits had taken place and the opening of the trial had repeatedly been postponed because the Regional Court had failed to ensure the presence of the released defendants before it. In that context, the applicant also cited a number of the Court's judgments and submitted that persons kept in detention pending trial were entitled to “special diligence” on the part of the authorities. In his opinion, such diligence had not been shown in his case.

2. The Government's submissions

97. The Government considered that the length of the proceedings had not been excessive. They lasted some 4 years and 10 months and, except for one period, i.e. from 15 April 1996 to 28 August 1997, there had been no discernible delays. However, during that time the Regional Court had not remained passive. It had listed 12 hearings but had had to cancel all of them for reasons beyond its control, most notably because of the absence of the applicant's co-defendants.

The Government also heavily relied on the complexity of the case, stressing that it involved several defendants and numerous witnesses.

They concluded that the authorities had not failed to display due diligence in the conduct of the proceedings.

3. The Court's assessment

(a) The period to be taken into consideration

98. The Court notes that the proceedings started on an unknown date in 1995, when the authorities issued a warrant to search the applicant by “wanted” notice in connection with the suspicion of his having committed fraud (see paragraph 10 above). The charges against the applicant were communicated to him on 10 March 1995. On that date he had already been arrested for 7 days (see paragraphs 11-12 above). The applicant's conviction became final on 29 January 2000 (see paragraph 48 above).

Considering all the circumstances, and in particular the fact that the “wanted” notice had inevitably to be issued at least several days before the applicant’s apprehension on 3 March 1995, the Court finds that the period to be considered under Article 6 § 1 amounted to at least 4 years and 11 months.

(b) Reasonableness of the period in question

99. The Court will assess the reasonableness of the length of the impugned proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-X).

100. Considering the nature of the case, the Court accepts the Government’s argument that it was complex. That is clearly shown by the volume of evidence obtained and heard during the proceedings. Thus, the case concerned numerous charges of fraud against 13 accused and required the Regional Court to take evidence from 104 witnesses and 9 expert witnesses. Furthermore, the prosecution asked the court to consider voluminous documentary evidence (see paragraph 17 above).

101. As regards the conduct of the applicant, the Court notes that it is common ground that his conduct did not contribute to the length of the proceedings (see paragraphs 97-98 above). It finds no reason to hold otherwise.

102. With respect to the conduct of the national authorities, the Court observes that – except for the period of some 1 year and 8 months between 30 December 1995, the date of the lodgment of the bill of indictment with the trial court and 8 September 1997, the date of the first hearing – there were no discernible delays in the proceedings (see paragraphs 17 and 29 above). However, that delay was caused by events attributable exclusively to the applicant’s released co-defendants, namely their repeated failure to appear at trial. Indeed, during that time the Regional Court listed 12 hearings but had to cancel all of them because those defendants many times asked for the postponement of the trial, relying on health grounds and supporting their requests by medical evidence (see paragraph 19 above). That being so, the Regional Court cannot be held responsible for the initial procrastination in the proceedings. Furthermore, that court took measures to ensure the progress of the trial and, at the first hearing held, it severed the charges against the released co-defendants (see paragraph 29 above). Following that time, the determination of the charges against the applicant proceeded without any impediment. Hearings were listed and held at regular intervals of about 1 month. The process of obtaining evidence continued speedily and there were no hold-ups in the proceedings (see paragraphs 33, 39, 43 and 45-48 above).

103. In the circumstances, the Court concludes that the proceedings complained of do not disclose an unreasonable delay within the meaning of Article 6 § 1.

There has accordingly been no breach of that provision.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

104. The applicant maintained that the authorities had censored his letter to the Court and had, therefore, violated his right to respect for his correspondence. He alleged a breach of Article 8 which, in its relevant part, 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.”

1. The applicant's submissions

105. The applicant maintained that under Article 103 § 1 read in conjunction with Article 214 of the Code of Execution of Criminal Sentences his correspondence with the Court was privileged and could not be subjected to censorship. The interference with his correspondence had accordingly been unlawful and as such in breach of Article 8 of the Convention.

2. The Government's submissions

106. The Government acknowledged that the applicant's letter to the Court, dated 13 December 2000, had been stamped “censored”. They argued, however, that under the relevant legal provisions the authorities had a margin of discretion in deciding whether or not to censor a detainee's correspondence. In the applicant's case they had simply exercised their discretion but had not interfered with the content of his letter.

3. The Court's assessment

(a) General principles

107. Any “interference by a public authority” with the right to respect for correspondence will contravene Article 8 of the Convention unless it is “in accordance with the law, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Silver*

and Others v. the United Kingdom, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34 and *Niedbala v. Poland* no. 27915/95, § 78).

108. As to the expression “in accordance with the law”, the court has established three fundamental principles. The first one is that the interference in question must have some basis in domestic law. The second principle is that “the law must be adequately accessible”, a person must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to his case. The third principle is that “a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable a person to regulate his conduct; he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (see the *Silver and Others v. the United Kingdom* judgment cited above, §§ 86-88).

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

(i) Existence of an interference

109. It appears to be common ground that the opening of the applicant’s letter to the Court amounted to an “interference” with his right to respect for his correspondence under Article 8 (see paragraphs 106-107 above). The Court sees no reason to hold otherwise.

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

110. The Court notes that the Government did not indicate a concrete legal basis for the impugned interference. In particular, it does not seem that such a basis could follow from Article 217 of the Code of Execution of Criminal Sentences, as that provision applied only to persons detained on remand (“*tymczasowo aresztowanych*”), not to those who, as the applicant, served a sentence of imprisonment following the final conviction (see paragraphs 48 and 68-70 above).

In respect of convicted persons there was, however, a specific statutory prohibition on censoring, or otherwise mishandling, their correspondence to “institutions set up by international treaties ratified by the Republic of Poland concerning the protection of human rights”, laid down in Article 103 § 1 of the 1997 Code. That provision was framed in plain terms; indeed, contrary to the Government’s assertion, it did not leave a decision on whether to censor the applicant’s letter for the authorities’ discretion but expressly forbade them from doing so (see paragraph 68 above).

Since the authorities acted against that clear legal prohibition, the interference with the applicant’s correspondence with the Court was not “in accordance with the law”, as required by Article 8 of the Convention.

111. There has, therefore, been a breach of that provision.

VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

112. The applicant submitted, lastly, that the opening and censoring of his letter to the Court had also constituted a breach of Article 34 of the Convention, 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.”

1. The applicant's submissions

113. The applicant asserted that the fact that the authorities had opened, and become acquainted with the content of, his letter constituted an interference with his right of individual petition.

2. The Government's submissions

114. The Government considered that the mere fact that the applicant's letter had been stamped “censored” did not in itself amount to a breach of Poland's obligation under that Article. They stressed that on no occasion had the applicant's correspondence with the Court been stopped or intercepted. Nor had the delivery of his letters been postponed.

The Government further maintained that applicant himself had not claimed that his right of individual petition had been limited.

3. The Court's assessment

115. The Court has already found a breach of Article 8 of the Convention on account of the authorities' interference with the applicant's letter (see paragraph 111 above). It does not consider it necessary to examine the same set of facts from the point of view of the alleged interference with the exercise of the applicant's right to an individual petition under Article 34 of the Convention (see, *mutatis mutandis*, *Foxley v. the United Kingdom*, no. 33274/96, § 47, 20 June 2000).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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

117. Under the head of non-pecuniary damage the applicant claimed 600,000 Polish zlotys (PLN).

118. The Government considered that the sum in question was inordinately excessive. They asked 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.

119. The Court, making its assessment on an equitable basis, awards the applicant 5,500 euros under the head of non-pecuniary damage.

B. Costs and expenses

120. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of 2,000 euros for costs and expenses incurred in the proceedings before the Court.

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

122. 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).

123. 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 the claimed sum of 2,000 euros for his costs and expenses together with any value-added tax that may be chargeable, less the 830 euros received by way of legal aid from the Council of Europe.

C. Default interest

124. 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 a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention;
6. *Holds* that it is not necessary to examine the complaint 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 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses, less EUR 830 (eight hundred thirty euros) received from the Council of Europe, to be converted into Polish zlotys at the rate applicable at the date of settlement, together with any tax that may be chargeable on the above amounts;
 - (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 20 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President