



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

FOURTH SECTION

CASE OF WEDLER v. POLAND

(Application no. 44115/98)

JUDGMENT

STRASBOURG

16 January 2007

FINAL

16/04/2007

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 Wedler v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 44115/98) 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. Jarosław Wedler (“the applicant”) on 22 December 1997.

2. The Polish Government (“the Government”) were represented by their Agents, first Mr K. Drzewicki and subsequently by Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, about the excessive length of his detention, the length of criminal proceedings as a whole, the alleged lack of medical care in prison and about the non-adversarial nature of the proceedings concerning the applicant’s detention on remand.

4. On 27 May 2003 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of detention on remand, the length of criminal proceedings, the alleged lack of medical care in prison, and the non-adversarial nature of the proceedings concerning the applicant’s detention on remand.

On 17 October 2006 under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Opole.

6. On 15 March 1995 the applicant left Poland and went to Moscow in order to set up a business. On 31 May 1995 the Opole District Prosecutor issued a warrant to locate the applicant by means of a wanted notice. A detention order for a period of seven days was also issued. The applicant was suspected of, *inter alia*, obtaining credit by false pretences, forgery of documents and embezzlement.

7. The applicant was arrested in Moscow on 30 September 1996. According to his submissions, which were not contested by the Government, on 2 December 1996 the applicant was handed over to Polish police officers at the Moscow airport, put on a plane and transported to Warsaw.

A. Medical treatment received by the applicant during his detention

8. On 5 December 1996 the applicant was examined by a physician of the Opole Detention Centre. He found the applicant to be in good condition. Because the applicant had complained about bad headaches and, noting that a birth-mark on his leg had changed tint, the physician ordered a specialist examination of the applicant to be carried out and that he should be seen by a dermatologist. The applicant was prescribed analgesics.

9. On the same day the applicant underwent a dental examination; several caries were found and it appeared that the applicant's teeth had been trimmed-down in preparation for the restoration of crowns.

10. On 3 January 1997 the applicant visited a dentist and requested porcelain fillings for his decayed teeth. The applicant was informed that under the applicable laws this kind of specialist dental treatment could be offered only upon payment.

11. As during his subsequent dental examination the applicant had complained about the hypersensitivity of his trimmed-down teeth, the dentist partly reconstructed the crowns of the teeth.

12. In a letter of 25 February 1997 the Opole Regional Prosecutor requested the Head of the Opole Detention Centre to allow the applicant to continue his dental treatment.

13. Since the applicant declared that he had no financial means that would allow him to cover the costs of crowns (the treatment received so far had been of a temporary character), on 22 December 1997 the Chief Physician of the Regional Inspectorate of Prison Administration in Opole decided that the applicant should obtain artificial replacements and the

related treatment in the hospital of the First Wrocław Prison. During his stay in the Wrocław Prison in January 1998 the applicant received two sets of artificial dentures. The costs were covered by the Prison Administration.

14. Further dental treatment (correction of artificial dentures, restoration of crowns, dental fillings) was conducted in the Opole Detention Centre.

15. The applicant was often examined by various specialists, including an internist, a dermatologist, a psychiatrist, a neurologist, a laryngologist, and a eye specialist. It was established that the applicant suffered from, *inter alia*, arterial hypertension, gastritis and dizziness. Pharmacological treatment and a special diet were ordered.

16. In March 1997 the applicant intentionally injured himself by cutting his forearm and afterwards refused to have the wound stitched.

17. In March 1999 the applicant was diagnosed as suffering from uric acid diathesis and was placed for a month in the hospital of the First Prison in Wrocław. Subsequently, he continued his treatment in the Opole Detention Centre. On 19 June he was examined by a rheumatologist.

18. The Government submit that during his detention the applicant contested the quality of his medical treatment and complained about inadequate medical care. On the other hand, he refused to co-operate with medical staff. In particular, the applicant did not consent to giving blood samples for examination, did not adhere to a prescribed diet and refused to take medication for arterial hypertension (the applicant held on to the medication in his cell). The applicant also refused to undergo hospital treatment and questioned the competence of several specialists.

19. On 2 October 1999 the applicant was examined by the medical panel of the Opole Detention Centre. The panel confirmed the adequacy of medical treatment provided to the applicant and found that his health did not preclude his further detention on remand.

20. On 2 December 1999, the last day of his detention, the applicant was examined and his general state of health was described as good.

B. Criminal proceedings against the applicant

21. On 5 December 1996 the prosecutor informed the applicant of the charges against him.

22. On 6 December 1996 the Opole District Court decided to detain the applicant on remand until 2 March 1997. The court considered that in the light of evidence gathered there was a sufficient likelihood that he had committed an offence. The court also pointed to a risk of the applicant's absconding, observing that he had been arrested by a special Interpol unit in Moscow on the strength of an international search warrant.

23. It would appear that on the same date he lodged an appeal against this decision. On 30 December 1996 the Opole Regional Court dismissed the appeal. It held that as the applicant had remained abroad for a lengthy

period of time before being arrested, his argument that his parents required his constant care was not convincing.

24. On 6 January 1997 the applicant filed a request for release. On 12 February 1997 the Opole Regional Prosecutor dismissed the request.

25. On 16 February 1997 the applicant appealed. On 10 March 1997 the Wrocław Appellate Prosecutor dismissed the appeal, finding that the evidence gathered so far in the case, as well as the nature of the offences concerned, justified his continuing detention. Moreover, there were no grounds for releasing him under Article 218 of the Code of Criminal Procedure. Nevertheless, in view of the applicant's repeated requests, the prosecutor ordered an examination of his health and a review of the situation of his partner and his parents.

26. On 26 February 1997 the Opole Regional Court prolonged the applicant's detention until 2 June 1997, finding that the grounds on which the detention had been ordered were still valid. The court also observed that a number of witnesses and an expert in accountancy had still to be heard.

27. On 28 February 1997 the applicant appealed. On 25 March 1997 the Wrocław Court of Appeal dismissed the appeal, finding that the grounds for maintaining him in detention remained valid. The court referred to a justified risk of the applicant's absconding and of his hindering the conduct of the investigation. The court recalled that the applicant had been sought and arrested by Interpol pursuant to an international search warrant and noted that further extensive evidence needed to be obtained in the case.

28. On 28 March 1997 the Opole Regional Prosecutor dismissed the applicant's request of 25 March 1997 for release, stating that contrary to his submissions, a thorough examination of his health and his family's situation had shown no grounds which would warrant his release.

29. On 3 April 1997 the applicant requested the Wrocław Court of Appeal to replace his detention by police supervision. On 17 April 1997 the Opole Regional Prosecutor dismissed the request, relying on the grounds invoked in the decision of 28 March 1997. On 27 April 1997 the applicant appealed. On 15 May 1997 the Appellate Prosecutor dismissed the appeal.

30. On 27 May 1997 the Wrocław Court of Appeal prolonged the applicant's detention until 2 September 1997, finding that further procedural steps had to be taken and that there were no new circumstances for the purposes of the application of Article 218 of the Code of Criminal Procedure. On 17 July 1997 the Supreme Court dismissed the applicant's appeal of 4 June 1997.

31. On 18 July 1997 the Opole Regional Prosecutor dismissed the applicant's request for release of 17 July 1997.

32. On 21 August 1997 the Wrocław Court of Appeal prolonged the applicant's detention until 2 December 1997. The court relied on the probability of the applicant's guilt, the need to secure the proper conduct of the proceedings, the need to continue the investigation and on the risk that

the applicant, if released, would go into hiding. On 3 September 1997 the applicant appealed against this decision. On 26 September 1997 the Supreme Court dismissed the appeal.

33. On 15 September 1997 the applicant requested the prosecuting authorities to release him from detention and to apply more lenient preventive measures. On 24 September 1997 the Opole Regional Prosecutor dismissed the request, observing that his continued detention had been justified and that it had been constantly reviewed by the courts. On 23 October 1997 the Wrocław Appellate Prosecutor dismissed the applicant's appeal of 6 October 1997, referring to the probability of his guilt, the gravity of the charges against him and the fact that the investigation had not yet been completed. The applicant's family situation, although difficult, did not argue in favour of his release.

34. On 9 October 1997 the Opole Regional Prosecutor discontinued the investigation against the applicant in respect of certain of the charges against him.

35. On 2 December 1997 the Supreme Court prolonged the applicant's detention until 2 March 1998, finding that all the necessary evidence had not been yet obtained and that there was a reasonable risk of the applicant's absconding. On the same date the applicant complained that the hearing before the Supreme Court, at which the prosecution had been present, had been held in violation of the principle of equality of arms in that he had not been given an opportunity to present his defence in person. The applicant was informed by the Supreme Court that no appeal was available against this decision.

36. On 8 January 1998 the applicant requested that his detention be replaced with more lenient preventive measures, namely bail in the amount of around PLN 5,000, police supervision, prohibition on leaving the country and seizure of his passport. The applicant's lawyers also argued that it was not true that their client had been hiding in Russia before his arrest, given that he had regularly visited the Polish Consulate in Moscow.

On 22 January 1998 the Opole Regional Prosecutor dismissed the request, finding that there existed a danger of his absconding. On 27 January 1998 the applicant appealed against this decision. On 16 February 1998 the Wrocław Appellate Prosecutor informed him that since the case file had been transferred to the Supreme Court, his appeal would be examined at a later date.

On 4 March 1998 the Appellate Prosecutor dismissed the applicant's appeal, referring to the reasonable risk of his absconding, going into hiding or obstructing the investigation. The prosecutor noted that the investigation would soon be brought to an end.

37. On 20 January 1998 the applicant requested that he and his lawyer be permitted to attend hearings before the Supreme Court during which his detention on remand would be examined.

38. On 26 February 1998 the Supreme Court prolonged the applicant's detention until 2 June 1998, finding that his continuing detention was necessary since the investigation had not yet been concluded. In particular, the Central Forensic Laboratory and the Opole Forensic Laboratory had not completed the taking of all necessary expert evidence and the judicial assistance requested from the German prosecuting authorities had not yet been provided. In addition, further victims were emerging in the case. Moreover, there was a reasonable fear that the applicant, if released, would abscond or might otherwise obstruct the investigation.

39. On 30 March 1998 the applicant, invoking Articles 5 § 1, 5 § 4 and 6 § 3 of the European Convention on Human Rights, complained to the President of the Supreme Court that neither he nor his lawyer had been allowed to participate in a session during which the lawfulness of his detention on remand was examined.

40. On 19 April 1998 the applicant lodged a request to replace his detention with police supervision, seizure of his passport and bail in the amount of PLN 5,000. On 24 April 1998 the Opole Regional Prosecutor dismissed the request, relying on the same reasons as those set out in his previous decisions. On 15 May 1998 the Appellate Prosecutor dismissed the applicant's appeal.

41. On 9 May 1998 the applicant requested the President of the Supreme Court to allow him to participate in a court session at which his detention on remand would be considered.

42. On 28 May 1998 a bill of indictment against the applicant was submitted to the Opole Regional Court. The applicant was charged with several counts of obtaining credit by false pretences, forgery of documents and embezzlement. The public prosecutor requested the court to hear 151 witnesses, 8 expert witnesses and to read out 1,200 documents at the hearing. The investigation files numbered 49 volumes.

43. On 1 June 1998 the Opole Regional Court decided to continue the applicant's detention until 2 November 1998 in view of the evidence gathered, a justified fear of his absconding or going into hiding, the serious nature of the offence and the complexity of the proceedings.

44. On 4 June 1998 the applicant lodged an appeal against this decision and requested to be allowed to be present at a hearing before the appellate court at which his appeal would be examined. On 24 June 1998 the Court of Appeal upheld this decision, finding that the detention was necessary in order to ensure the proper conduct of the proceedings. The court noted that the grounds of the applicant's detention had already been examined three times by the Supreme Court.

45. On 3 June 1998 the applicant requested the court to remit the case to the prosecution in order to review the stage reached in the investigation.

46. On 29 July 1998 the applicant filed a request for release. The Opole Regional Court dismissed the request on the same day. On 7 August 1998

the Opole Regional Court dismissed the applicant's appeal against this decision, qualifying it as a new request for release.

47. On 25 August 1998 the applicant submitted a new request for release. On 26 August 1998 the Opole Regional Court decided to adjourn the examination of the applicant's request until information concerning the applicant's health and his family situation had been obtained.

48. It would appear that on 12 September 1998 the applicant lodged a request to be allowed to participate in a court session before the Opole Regional Court concerning his detention on remand.

49. On 17 September 1998 the Opole Regional Court held a session to examine the applicant's request for release. The applicant's lawyer was present and submitted his arguments in support of the applicant's release. Having heard the parties the court dismissed the request, relying on the grounds mentioned in the previous decisions.

50. On 23 September 1998 and 14 October 1998 the applicant requested the court to release him and to allow him and his lawyer to participate in a court session at which his motion would be examined. On 19 October 1998 the court held a session to consider the applicant's request. Having heard the applicant's lawyer and the prosecutor, the court dismissed the request.

51. On 2 November 1998 the court held the first hearing on the merits of the case. At the hearing the court, having heard both parties, decided to prolong the applicant's detention until 2 December 1998.

52. In a letter of 2 November 1998 the applicant challenged a judge sitting in the panel.

53. On 9 November 1998 the court decided to remit the case to the prosecution for further investigations. On 16 November 1998 the prosecutor appealed against this decision. On 17 December 1998 the Wroclaw Court of Appeal decided to quash the decision of the Regional Court.

54. On 26 November 1998 the Supreme Court prolonged the applicant's detention on remand until 2 June 1999.

55. On 29 January 1999 the applicant requested the court to quash his detention on remand. On 5 February 1999 the Opole Regional Court refused to release him, finding that his continued detention was necessary to ensure the proper conduct of the proceedings. The applicant's lawyer had been duly summoned, but had failed to appear at the court session.

56. On 23 February 1999 the court held a hearing. The applicant challenged the presiding judge and the public prosecutor. The applicant also requested that the case be remitted to the prosecution for further investigation and that an expert witness be appointed to examine his state of health. The court adjourned the hearing until the applicant's request challenging the presiding judge had been examined by another panel of judges.

57. On 25 February 1999 the Opole Regional Court dismissed the applicant's challenge to the judge. On 9 March 1999 the applicant appealed.

On 11 March 1999 the court refused to examine the appeal since no appeal was available against such a decision.

58. On 9 March 1999 the applicant lodged a request for release, complaining that his detention was unlawful and excessively lengthy, that he was in poor health and that there had been a delay in the proceedings in breach of Article 6 § 1 of the European Convention on Human Rights.

59. On 15 March 1999 the Opole Regional Court dismissed the applicant's request. It considered that his continued detention was necessary to secure the proper conduct of the proceedings and that it did not entail a serious danger to his life or health.

60. On 16 and 19 March 1999 the applicant requested that the decision to detain him on remand be quashed, submitting, in particular, that his health was very poor and complaining about the failure of the prison medical staff to diagnose and treat his illness. On 26 March 1999 the Opole Regional Court held a session to examine the application for release and requested the prison authorities to submit information on the applicant's state of health.

61. On 29 March 1999 the applicant's privately-hired lawyer informed the court that the applicant had withdrawn his power of attorney.

62. On 16 April 1999 the prison authorities submitted to the court the medical opinion on the applicant's health. The opinion stated that the applicant's state of health was no obstacle to his continued detention.

63. On 19 April 1999 the applicant complained that he had been suffering from a chronic and incurable motor system disorder due to the fact that his ill-health had been neglected by the prosecuting authorities and by incompetent prison medical staff and because he had been treated in appalling conditions in the prison hospital.

64. On 26 April 1999 the applicant lodged a request to quash his detention on remand, referring to his ill-health.

65. On 29 April 1999 the Opole Regional Court, having heard the prosecutor and the applicant's lawyer, dismissed the applicant's requests of 16 March 1999 and 26 April 1999, finding that his detention was necessary in view of the probability of his guilt and given that according to medical certificates submitted by the prison doctors, the applicant could be treated under the prison medical scheme.

66. On 6 May 1999 the applicant challenged a judge sitting in the panel.

67. On 17 May 1999 the applicant requested to be brought to the court session in the Supreme Court at which his detention on remand would be examined.

68. On 25 May 1999 the Supreme Court decided to prolong the applicant's detention on remand until 2 December 1999. The court was of the opinion that the applicant had contributed to the delay in the proceedings, given that he had filed a motion challenging a judge and as well as a motion to withdraw his lawyer's power of attorney. The court once

again referred to a justified fear of the applicant's absconding and recalled that he had been sought by Interpol. The applicant's legal-aid lawyer failed to appear in court, although he had been duly summoned.

69. On 9 June 1999 the court appointed two additional legal-aid lawyers for the applicant.

70. At a hearing held on 16 September 1999 the court dismissed the applicant's request for release. At a hearing held on 13 October 1999 the applicant again unsuccessfully applied for release. The court requested the Medical Panel of the Opole Detention Centre to submit information regarding his health. At a hearing held on 21 October 1999 the applicant again requested to be released.

71. On 29 October 1999 the Medical Panel of the Opole Detention Centre submitted the opinion concerning the applicant's health. At a hearing held on 4 November 1999 the court dismissed his request for release relying on the medical opinion that he was in good health.

72. The applicant was released on 2 December 1999. On 1 December 1999 the court imposed police supervision on the applicant and prohibited him from leaving Poland.

73. According to the applicant's submissions of 26 July 2006, the proceedings in his case are still pending before the first-instance court.

II. RELEVANT DOMESTIC LAW

74. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are stated in the Court's judgments in cases of *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

75. For the relevant domestic law and practice concerning the available remedies against excessive length of proceedings, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006, §§ 26-35.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant complained under Article 3 of the Convention about the failure to provide him with adequate medical care in the Opole Detention Centre. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Admissibility

77. The applicant claimed that he had suffered enormous pain because his teeth had been trimmed down and exposed. He alleges that the prison authorities had repeatedly refused his requests to have artificial porcelain crowns fitted. He complained that the work on the temporary reconstruction of his teeth only began when he had lodged his application with the Court. During period of one year he had been refused treatment and had been required to pay for it.

78. The applicant further submitted that he had not been placed under psychiatric observation while in detention and that other psychiatric examinations carried out on him had been superficial. It had not therefore been reliably established that his condition was compatible with his detention. He claimed that his suicide attempt in 1997 had proved the authorities' lack of diligence in this matter. The applicant supported his allegations with reference to the fact that after he had been released he underwent psychiatric treatment in a civil hospital between 18 October and 12 November 2002 and was diagnosed with mood disorders.

79. The applicant did not contest the Government's submissions that while detained he had been examined on numerous occasions and treated by various specialists. However, the applicant complained that he had not been treated by a physician of his own choice and that he had not trusted the prison doctors. He admitted that he had been prescribed a special diet and medication. He claimed that he had followed the doctors' instructions except when his mental condition had been particularly bad.

80. The Government disputed the applicant's allegations. They stressed that the applicant had been examined by various specialists and had been offered adequate dental treatment. The Government emphasised that the applicant had been provided with two sets of dentures. The Regional Inspectorate of Prison Administration in Opole had eventually offered to bear all the costs of the applicant's dental treatment since he had been unable to cover them, although under the applicable domestic laws this type

of treatment could be provided only upon payment by a detainee. The Government also stressed that the applicant had received adequate medical treatment despite the fact that he had repeatedly refused to co-operate with doctors and had challenged their professional competence (see paragraphs 8 and 20 above).

81. The Court first recalls that according to the Convention organs' case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention (see the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 162). It also recalls that lack of medical treatment in prison may raise an issue under Article 3. In such cases, the factors to be considered are the seriousness of the applicant's condition, the quality of medical care he receives and whether his state of health is compatible with detention. Also, there remains the State's obligation to maintain a continuous review of the detention arrangements employed with a view to ensuring the health and well-being of all prisoners, having due regard to the ordinary and reasonable requirements of imprisonment. However, it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment (see *Lukanov v. Bulgaria*, Eur. Comm. HR, Dec. 12.1.1995, D.R. 80-A, pp. 128-130; *Aerts v. Belgium*, judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V, p. 1966, §§ 64 et seq.; *Kudła v. Poland*, no. 30210/96, §§ 91 and 94, ECHR 2000-XI).

82. Turning to the circumstances of the present case, the Court observes that the applicant regularly sought, and obtained, medical attention. It was common ground between the parties that he had often been examined by the prison doctors and that various forms of medication had been administered to him. It is to be observed that the health professionals who examined the applicant at no stage considered that his ailments were of such severity as to entail any serious long-term danger to his health.

83. It is further to be noted that on several occasions, following the applicant's requests for release, the domestic court ordered that a comprehensive medical assessment of his condition be carried out by a medical expert or by a panel of prison doctors (for example in March 1997, August 1998, April 1999, October 1999 and December 1999; see paragraphs 19-20, 28, 47, 60-65 and 71 above). All these reports were prepared with a view to establishing whether the applicant's continued detention was compatible with his condition. None contained a conclusion that the applicant should be released from detention.

84. With regard to the applicant's dental treatment, the Court observes that the applicant was provided with temporary solutions to ease his pain and that eventually he did receive porcelain crowns free of charge.

85. Lastly, as regards the applicant's alleged attempted suicide, the Court does not find on the material before it anything to show that the authorities can be held responsible for what happened. The applicant was provided with immediate medical assistance. The fact that three years after his release the applicant was diagnosed with mood disorders is an insufficient basis for substantiating the allegation that the applicant was not provided with adequate psychiatric assistance in detention.

86. Consequently, the Court considers that the treatment complained of does not disclose any indication of a violation of Article 3 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

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

87. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which reads as follows:

“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.”

88. The Government contested that argument.

A. Admissibility

89. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

90. The Court observes that the applicant was detained on remand on 2 December 1996 and released on 2 December 1999. Consequently, the period to be taken into consideration under Article 5 § 3 lasted three years.

2. The reasonableness of the length of detention

(a) The parties' arguments

91. The applicant maintained that the period of three years during which he was held in custody was incompatible with the “reasonable time” requirement set out in Article 5 § 3. In his submission, the grounds relied on by the authorities in their detention decisions could not be considered “relevant” and “sufficient” so as to justify the entire period of his detention.

92. The applicant claimed that the number of volumes making up the case file of the criminal proceedings against him was in fact lower than the Government had submitted. In any event, the mere size of the case file was irrelevant for the assessment of the period of his detention since various aspects of the proceedings related to criminal proceedings against other persons. He also stressed that the number of witnesses in his case could not justify his continuing detention.

93. The applicant further submitted that the circumstances of his arrest in Moscow, namely the international arrest warrant issued by Interpol, did not prove that there had been a risk of his absconding. In his view, the warrant rather indicated negligence on the part of the prosecution, given that his address abroad had been known to the Polish authorities but no official summons had ever been served on him prior to his arrest.

94. The applicant alleged that the courts had never considered the imposition of other, more lenient preventive measures on him, even though such alternative means of ensuring his presence at trial had been provided for by Polish law. In their decisions the courts had never explained why bail or police supervision, or both of those measures, would not have guaranteed that the proceedings followed their proper course.

He also alleged that the authorities had failed to have regard to his poor health.

95. Lastly, the applicant asserted that the judicial authorities had not shown any special diligence in the conduct of the proceedings. In particular, there had been several months of inactivity and delays when the courts had transferred the files between different levels of jurisdiction.

96. The Government disagreed. They argued that the relevant authorities had given valid and rational reasons for the applicant's detention.

They stressed that he had been charged with serious offences and that he had faced the likelihood of a heavy sentence. In the Government's opinion, the suspicion against the applicant had been reasonable and was strongly supported by the evidence obtained during the investigation.

97. The Government further maintained that the need to secure the proper conduct of the proceedings, in particular the need to obtain evidence from several witnesses, justified the applicant's prolonged detention. They relied on the complexity of the case and on the fact that it concerned

prolonged criminal activity of the applicant who had been accused of obtaining credits by false pretences and forgery to the detriment of several victims. The Government emphasised that the necessity of the applicant's continued detention had been kept under thorough and regular examination by courts at two instances and by the Supreme Court.

98. Lastly, the Government argued that the extraordinary prolongation of the applicant's detention was needed on account of his obstructive conduct. He had considerably contributed to the prolongation of the judicial proceedings in his case by submitting numerous requests and appeals. In particular, his motion challenging a judge and the withdrawal of his lawyer's power of attorney had prevented the Opole Regional Court on two occasions from beginning the trial.

(b) The Court's assessment

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

99. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 152 et seq., ECHR 2000-IV; *Kudła*, cited above, § 110).

100. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Muller v. France* judgment of 17 March 1997, *Reports* 1997-II, p. 388, § 35; *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-...).

101. 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 (*Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 35, § 84, *Kudla*, cited above, §111).

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

102. The Court observes that in the present case the judicial authorities relied, first of all, on the reasonable suspicion that the applicant had committed the offences with which he had been charged, on the serious nature of those offences and the need to ensure the proper conduct of the proceedings. They repeated those grounds in nearly all their decisions.

The Court acknowledges that the suspicion against the applicant of having committed the offences could initially have justified his detention. However, that ground could not constitute a “relevant and sufficient” ground for detaining him for the entire period.

103. The Court notes that the applicant repeatedly requested the courts to release him because his health was very bad and had been aggravated by his detention. The Court would however point out that the question of whether or not the medical condition of a detainee is compatible with his or her continued detention should primarily be determined by the national courts and, as the Court has held in the context of Article 3 of the Convention, those courts are in general not obliged to release him on health grounds or to place him in a civil hospital to enable him to receive a particular kind of medical treatment (see *Kudla*, cited above, § 93). It also observes that the applicant’s state of health was repeatedly examined by the domestic courts in the context of the proceedings concerning his detention.

104. On the other hand, the Court observes 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. That provision does not give the judicial authorities a choice between either bringing the accused to trial within a reasonable time or granting him provisional release – even subject to guarantees. Until conviction he must be presumed innocent, and the purpose of Article 5 § 3 is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

105. In that connection, the Court notes that during the applicant’s detention, despite his numerous requests, no proper consideration appears to have been given to the possibility of imposing on him other “preventive measures” – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings. The domestic courts, repeatedly relying on the view that the applicant should be kept in detention in order to ensure the proper conduct of the trial, did not explain why those alternative measures would not have guaranteed his

presence at the trial or why, had the applicant been released, his trial would not have followed its proper course. It is noted that the risk of his absconding did not materialise after his eventual release on 2 December 1999, when the passage of time and the advanced stage reached in the proceedings were eventually taken into account by the Supreme Court (see paragraph 72 above).

106. In this context the Court cannot but note the fact that the bill of indictment was submitted to the court one year and six months after the applicant's arrest and that the first hearing on the merits was held another year later. The Court reiterates in this context that given the importance of the right to liberty, and the possibility, for example, of copying the relevant documents rather than sending the original file to the authority concerned on each occasion, the applicant's many appeals for release should not have been allowed to have had the effect of suspending the investigation and thus delaying his trial (see *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, p. 21, § 77; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 158).

107. The Court accordingly concludes that the reasons relied on by the courts in their decisions were not sufficient to justify the applicant's being held in custody for three years.

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

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

108. The applicant also asserted that the respondent State had breached Article 5 § 4 of the Convention which reads:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

109. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

110. The applicant complained that neither he nor his lawyer was entitled to be present when the courts were reviewing his detention on remand. Moreover, in the proceedings concerning his detention on remand,

the courts refused to examine witnesses on his behalf. These proceedings had therefore not been adversarial. He also submitted that his applications for release as well as his appeals against refusals to release him, in particular those of 4 June 1997 (dismissed by the Supreme Court on 17 July 1997) and 3 September 1997 (dismissed on 26 September 1997) had not been examined speedily by the courts.

111. The Government acknowledged that before 1 September 1998 (i.e. the date on which the 1997 Code of Criminal Procedure entered into force) an accused and his lawyer had not been entitled to participate in court sessions concerning a request for release or prolongation of detention on remand. However, this situation had considerably changed after 1 September 1998 and already on 17 September 1998 the applicant's lawyer participated in the relevant court sessions and submitted arguments in support of the applicant's request for release. The same adversarial procedure had been applied to the applicant's subsequent requests.

112. With regard to the complaint that the lawfulness of the applicant's detention had not been decided speedily, the Government submitted that the examination of his appeals of 4 June 1997 and of 3 September 1997 required the transmission of the voluminous case file from the Opole Regional Prosecutor to the Supreme Court in Warsaw. On 27 May 1997 the case file had been examined by the Wrocław Court of Appeal, on 4 June 1997 the case file had been sent to the Opole Regional Prosecutor and, once the applicant had submitted his appeal, the case file had been forwarded to the Supreme Court. In the meantime the public prosecutor had to conduct normal investigation activities. When the appeal of 3 September 1997 had been examined, the applicant filed (on 15 September) with the Opole Regional Prosecutor a further request for release. It was dismissed on 24 September 1997.

The Government further emphasised that the lawfulness of the applicant's continued detention had been under the continuous supervision of the relevant authorities, including the period when the applicant had been waiting for an examination of his appeal against the decision of 21 August 1997.

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

114. Accordingly, there has been a violation of Article 5 § 4 of the Convention with regard to the lack of adversarial proceedings before the courts examining the lawfulness of the applicant's detention, up until 17 September 1998 (see paragraph 49 above).

115. With regard to the complaint relating to the allegedly excessive length of time taken to examine the applicant's requests for release, the Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see, for instance, *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

116. In the circumstances of the present case, the examination of the two appeals complained of had lasted forty two days and twenty three days respectively. The Court however observes that the requirement of a speedy decision provided for in Article 5 § 4 relates primarily to a first decision issued upon the applicant's request for release. Thus, the period of examination of an appeal against this decision will not necessarily entail a breach of this provision, even though the same period of time might not be considered reasonable with regard to proceedings before a first-instance authority. It should also be borne in mind that the applicant retained the right to submit a further application at any time (see, *mutatis mutandis*, *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, p. 2, § 56). Indeed, the applicant had fully availed himself of his rights in this respect, having regularly lodged new requests for release which were all dealt with within one to fourteen days.

117. Consequently, the Court considers that the applicant's right to have the lawfulness of his detention decided speedily has not been breached. The Court thus finds that there has been no violation of Article 5 § 4 of the Convention in this regard.

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

118. Lastly, the applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been excessively long.

Article 6 § 1, in so far as relevant, provides:

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

119. The Government contested that argument.

Admissibility

120. The Court must first determine whether the applicant has exhausted the remedies available to him in Polish law, in accordance with Article 35 § 1 of the Convention.

The Court reiterates in this connection that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, this rule is subject to exceptions which may be justified by the particular circumstances of each case; this is also the case when the application concerns length of judicial proceedings (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001; *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

121. The Court observes that the 2004 Act contains, in its section 18, provisions of a transitional character concerning persons who, as the applicant in the present case, lodged an application with the Court alleging a violation of Article 6 of the Convention on account of the unreasonable length of the proceedings. Under this provision it was open to them to lodge, within six months from 17 September 2004, a complaint provided for by section 5 of that Act with a competent domestic court, provided that their application with the Strasbourg Court had been lodged in the course of the proceedings concerned and that the Court had not yet adopted a decision on the admissibility of their case. Accordingly, the Court finds that the applicant was entitled, throughout the period from 17 September 2004 until 17 March 2005, to lodge such a complaint. Moreover, since the proceedings in his case are pending, he still has the possibility of availing himself of the remedy provided for by section 5 taken alone.

122. The Court further recalls that it has held that this remedy was effective in respect of the excessive length of criminal proceedings as it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (*Charzyński v. Poland* (dec.), no. 15212/03).

123. The Court further notes that the applicant was informed, by a letter of the Registry of 1 December 2004 and 16 May 2006, of the existence of remedies provided for by the 2004 Act. However, by a letter of 6 June 2006 he informed the Court that he did not intend to avail himself of them.

124. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The applicant claimed EUR 16,200 in respect of pecuniary and EUR 10,000 in respect of non-pecuniary damage.

127. The Government contested the claim.

128. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

129. The Court cannot speculate as to whether the applicant would have been detained if the procedural guarantees of Article 5 § 4 of the Convention had been observed in his case. Consequently, the Court considers that the alleged non-pecuniary damage is adequately compensated by the finding of a violation of this provision (*Salapa v. Poland*, no. 35489/97, § 157, 19 December 2002).

130. On the other hand, the Court accepts that the applicant suffered non-pecuniary damage – such as distress and frustration – resulting from his protracted detention, which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

131. The applicant also claimed reimbursement of the costs and expenses incurred before the domestic courts. He maintained, however, that he could not specify an exact amount since the proceedings had not yet ended.

132. The Government contested the applicant's claim.

133. The Court recalls that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum. In this regard the Court observes that the applicant has received legal aid in the domestic proceedings and the relevant costs have already been met by the State. The Court reiterates further that costs incurred before national courts may only be taken into account if they were incurred in seeking redress for the violations of the Convention found, which was not so in the instant case (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

On the other hand, having regard to all the circumstances, the Court awards the applicant, who was not represented by a lawyer, EUR 100 for the costs and expenses incurred in the Strasbourg proceedings.

C. Default interest

134. 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. *Declares* admissible the complaints concerning the length of the applicant's detention and the lack of an adversarial procedure in the proceedings concerning his detention on remand and the speediness of the proceedings concerning the applicant's requests for release, and the remainder of the application inadmissible;
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 with regard to the lack of an adversarial procedure in the proceedings concerning his detention on remand up until 17 September 1998;
4. *Holds* that there has been no violation of Article 5 § 4 of the Convention with regard to the speediness of the proceedings concerning the applicant's requests for release;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (iii) 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;

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

Done in English, and notified in writing on 16 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President