CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 49929/99
by Wiesław CHODECKI
against Poland

The European Court of Human Rights (Third Section), sitting on 9 October 2003 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr P. KŪRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr L. GARLICKI, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 10 August 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Polish national, who was born in 1955 and is currently serving a sentence in a prison in Wojkowice, Poland.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 12 June 1994 the applicant was arrested on suspicion of murder.

On 13 June 1994 the Sosnowiec District Prosecutor (*Prokurator Rejonowy*) remanded him in custody.

On 5 September 1994 the Katowice Regional Court (*Sąd Wojewódzki*) prolonged the applicant's detention on remand until 30 October 1994 relying on the existence of a reasonable suspicion that he had committed the offence he had been suspected of. The court referred also to the fact that two expert opinions had to be prepared.

On 28 October 1994 the District Prosecutor submitted to the Regional Court the bill of indictment. She requested, *inter alia*, the examination of 38 witnesses.

The trial court held hearings on 12 January, 16 March, 21 March, 28 March, 1 June, 8 June, 20 June, 12 October and 12 December 1995, as well as 28 March 1996.

On 28 March 1996 it gave judgment. The court convicted the applicant as indicted and sentenced him to twelve years' imprisonment. The applicant appealed.

On 13 August 1996 the Katowice Court of Appeal (*Sąd Apelacyjny*) quashed the appealed judgment and remitted the case for re-examination. It pointed out that the case was based on circumstantial evidence and certain facts required clarification.

The Regional Court held hearings on 10 December 1996, 27 February, 28 February, 26 March, 30 April, 8 May and 28 October 1997, as well as on 14 and 22 January 1998.

On two occasions between 13 August 1996 and 1 June 1998 the applicant's counsel lodged applications for release, but to no avail.

On 1 June 1998 the court prolonged the applicant's detention until 30 November 1998. It made reference to the reasonableness of the suspicion that he had committed the offence he had been charged with. The court mentioned the seriousness of that offence and the necessity to examine further evidence. The applicant and his counsel appealed against that decision.

On 24 June 1998 the Court of Appeal dismissed both appeals. It pointed out that the principle referred to by the applicant, whereby detention exceeding two years could be prolonged only by the Supreme Court, did not apply to his case. The court observed that that principle concerned only the proceedings before the trial court and it was no longer valid after that court's judgment, even if that judgment was subsequently quashed by the appellate court.

On 24 September 1998 the Regional Court gave judgment. It again convicted the applicant of murder and sentenced him to ten years' imprisonment. The applicant's counsel appealed.

On 25 February 1999 the Court of Appeal dismissed his appeal. On 26 April 1999 the applicant's counsel lodged with the Supreme Court a cassation appeal against the judgment of the Court of Appeal.

On 6 March 2000 the Supreme Court dismissed that appeal.

B. Relevant domestic law

On 4 August 1996 an amendment to the Code of Criminal Procedure entered into force, according to which time-limits for detention on remand were introduced.

From that date on, Article 222 of that Code read, 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 ordinary offences. In cases concerning serious offences this period may not exceed two years.
>
> 4. In particularly justified cases the Supreme Court may, upon the request of the court competent to deal with the case (...) prolong detention on remand for a further fixed period exceeding the periods referred to 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."

On 1 September 1998 the 1997 Code of Criminal Procedure replaced the 1969 Code. The relevant part of Article 263 of that Code provides:

> "3. The length of detention on remand until the delivery of a first judgment by the trial court shall not exceed two years.
>
> 4. Detention on remand may be prolonged for a fixed period exceeding the periods provided in paragraphs 2 and 3 only by the Supreme Court at the request of the court dealing with a case (...) – if it is necessary because of the suspension of criminal proceedings, the prolonged psychiatric observation of an accused, the prolonged preparation of an expert opinion, the collection of evidence in a particularly complicated case or abroad, a delay in the proceedings caused by an accused as well as other obstacles which could not be overcome."

COMPLAINTS

1. The applicant complains under Article 5 § 3 of the Convention that his detention on remand lasted too long.

2. He complains under Article 5 § 4 of the Convention that the prolongation of his detention on remand beyond two years was not ordered by the Supreme Court and therefore was unlawful. He complains that at no stage of the proceedings the Supreme Court decided on the lawfulness of his detention.

3. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings against him exceeded a reasonable time.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention about the length of his pre-trial detention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further raises complaints under Article 5 § 4 of the Convention.

(a) The Court, however, notes that the complaint concerning the alleged unlawfulness of the applicant's detention relates to Article 5 § 1 and it therefore falls to be examined under that provision, which provides, in so far as relevant:

> "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;"

The Court observes that the applicant alleges the unlawfulness of his detention exceeding two years due to the lack of an order prolonging it given by the Supreme Court.

The Court notes that according to the domestic courts (see the reasoning of the Court of Appeal's decision of 24 June 1998) the principle relied on by the applicant, whereby only the Supreme Court could prolong detention beyond two years, ceased to apply to his case on 13 August 1996, when the trial court's judgment was quashed by the Court of Appeal. A decision of the Supreme Court was thus not required by Polish law in the applicant's case.

The Court recalls that such interpretation of the domestic law was correct and did not run counter to the guarantees of Article 5 § 1 of the Convention (see *Węgrzyn v. Poland* (dec.), no. 39251/98, 5 December 2002).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) The applicant further complains that at no stage of the proceedings the Supreme Court decided on the lawfulness of his detention. He relies on 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."

The Court observes that, in view of its above findings, the applicant could not apply to the Supreme Court, but only to lower courts. It appears that on at least two occasions the applicant made use of his right to have the lawfulness of his detention examined. The mere fact that his applications were not examined by the Supreme Court does not suffice to raise an issue under Article 5 § 4.

Consequently, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant complains about the length of the proceedings, relying on Article 6 § 1 of the Convention, the relevant part of which provides:

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

The Court notes that the proceedings begun at the latest on 12 June 1994 and ended on 6 March 2000. They therefore lasted 5 years, 8 months and 24 days.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

The Court notes that the case discloses a relatively high level of complexity, since it was based on circumstantial evidence. The complexity can be shown also by the number of witnesses (thirty-eight) the prosecutor wished to have examined at the trial.

The applicant does not seem to have contributed to the undue prolongation of the proceedings.

The Court observes that courts at three judicial levels examined the case and gave altogether five judgments. The prosecution authorities completed their investigations within only four and a half months. The trial court

scheduled hearings at regular intervals and did not remain inactive for any significant periods of time.

Consequently, the Court considers that in the circumstances of the case a period of nearly five years and nine months cannot be regarded as excessive. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of his detention on remand;

Declares the remainder of the application inadmissible.

Mark VILLIGER
Deputy Registrar

Georg RESS
President

Commented [Note1]: Summarise the complaints without necessarily citing the invoked Convention Articles.