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. 40698/98
by Tadeusz ORATOWSKI
against Poland

The European Court of Human Rights (Third Section), sitting on 6 February 2003 as a Chamber composed of

Mr G. RESS, *President*,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 24 January 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, Tadeusz Oratowski, is a Polish national, who was born in 1955 and lives in Cracow. He is represented before the Court by Mr A. Włoch, a lawyer practising in Cracow.

A. The circumstances of the case

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

The applicant is a policeman by profession.

On 1 April 1993 he was arrested by the police on suspicion of aiding and abetting in homicide.

On 1 April 1993 the applicant lodged a complaint with the President of the Cracow District Court (*Sąd Rejonowy*) maintaining that his arrest had been unlawful as he was innocent. On 2 April 1994 the Cracow District Court dismissed this complaint.

On 2 April 1993 he was brought before J.B., a regional prosecutor from the Cracow Regional Prosecutor's Office (*Prokuratura Wojewódzka*), charged with aiding and abetting in a murder and detained on remand.

On 6 April 1993 the applicant lodged an appeal against the detention order. He relied on his bad health and difficult family situation.

On 21 April 1993 the Cracow Regional Court (*Sąd Wojewódzki*) dismissed the applicant's appeal. The Regional Court considered that the applicant's detention was justified as there were serious indications that he had committed the offence with which he had been charged and also that he was a policeman involved in the homicide investigation. Finally, the court was of a view that there were no grounds for release as listed in Article 218 of the Code of Criminal Procedure.

On 25 June 1993 the Cracow Regional Court allowed the request submitted by the prosecutor and extended the applicant's detention until 1 October 1993. The applicant made an application for release but it was dismissed by the Cracow Court of Appeal (*Sąd Apelacyjny*) on 22 July 1993.

On 7 September 1993 the Minister of the Interior (*Minister Spraw Wewnętrznych*) delivered a decision and allowed disclosure of certain classified documents (i.e. confidential police reports) for the purposes of investigation.

On 24 September 1993 the Cracow Regional Prosecutor modified the charges laid against the applicant into misappropriation, bribery and aiding and abetting in homicide.

On 28 September 1993 the Cracow Regional Court prolonged the applicant's detention until 31 October 1993.

On 29 October 1993 a bill of indictment against the applicant was submitted to the Cracow Regional Court.

On 17 March 1994 the applicant was brought before the trial judge and the first hearing in his case was held.

At a hearing held on 18 May 1994 the court decided to ask the Minister of the Interior to disclose the above-mentioned classified documents.

On 3 March 1995 the applicant was released on bail.

Subsequently, on an unknown date, the composition of the panel of the trial court changed. As a result, the newly-composed trial court had to re-hear evidence.

On 28 April 1998 the Cracow Regional Court stayed the proceedings and decided to ask again the Minister of the Interior to disclose further classified documents. The court referred to the fact that the previously obtained decision concerned the judges who were no longer sitting on the panel.

On an unknown date in 1999 the case was transferred to the Cracow District Court.

On 16 July 1999 the Cracow District Court for the third time applied to the Minister of the Interior to disclose the classified information.

On 23 July 2002 the court held a hearing and heard evidence from one witness. The court set the next hearing for 3 September 2002.

The hearing listed for 28 January 2003 was adjourned due to the prosecutor's absence.

It appears that the proceedings are pending before the Cracow District Court.

B. Relevant domestic law

The relevant domestic law pertaining to imposition and prolongation of detention on remand is described in the judgment of *Niedbala v. Poland*, (no. 27915/95, §§ 18-20 and 24-31, 4 July 2000).

COMPLAINTS

1. The applicant complains under Article 6 of the Convention about the unreasonable length of the criminal proceedings against him.

2. The applicant complains under Article 3 of the Convention that he cannot pursue a career in the police because the criminal proceedings against him are pending.

3. He further generally complains under Article 6 of the Convention claiming that the principle of "equality of arms" has been violated in the proceedings against him.

4. He also raised a complaint under Article 5 § 3 of the Convention that his detention on remand had been ordered by the investigating prosecutor, who could not be considered a "judge" or an "officer authorised by law to exercise judicial power", within the meaning of that provision.

5. Lastly, he raises a general complaint under Article 13 of the Convention about the proceedings concerning applications for disclosure of classified documents.

THE LAW

1. The applicant complains under Article 6 of the Convention about the unreasonable length of the criminal proceedings against him.

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 of the Rule 54 § 3 (b) of the Rules of the Court, to give notice of the complaint to the respondent Government.

2. The applicant complains under Article 3 of the Convention that he is not able to pursue his police career because the criminal proceedings against him are pending.

The Court observes that, while the fact that the applicant was charged with a criminal offence may be a source of stress and anxiety to him, it cannot be said to have reached the threshold of treatment prescribed by Article 3.

It follows that this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

3. The applicant also complains under Article 6 of the Convention about the lack of "equality of arms" in the proceedings against him.

However, the Court notes that the relevant proceedings are still pending before the Cracow District Court and that, therefore, these complaints are premature.

It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

4. The applicant complains under Article 5 § 3 of the Convention that after having been arrested he had not been brought before a "judge" or "officer authorised by law to exercise judicial power".

Under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted and within six months from the date on which the last domestic decision was taken.

From the applicant's submissions it is clear that he was brought before a judge for the first time on 17 March 1994. That day, therefore, is the starting point of the six-month period as regards his complaint (see *G.K. v. Poland* (dec.), no. 38816/97, 8 December 1998, unreported).

The applicant raised the present complaint for the first time before the Convention organs on 22 March 1998 (i.e. when he filed the application form addressed to the Commission).

It follows that the above complaint was introduced outside the six-month time-limit under Article 35 § 1 of the Convention and must be rejected in accordance with Article 35 § 4.

5. Lastly, the applicant generally complains under Article 13 of the Convention about the proceedings relating to applications for disclosure of classified documents.

The Court notes that the applicant has failed to substantiate his complaints under this provision. Further, the Court finds that the facts of the case do not disclose any appearance of a violation of the above mentioned provision.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of criminal proceedings;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President