CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32726/96
by Janusz SADOWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 12 October 2000 as a Chamber composed of

Mr G. Ress, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mr J. Hedigan,
Mrs S. Botoucharova, *judges*,
and Mr V. Berger, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 20 January 1994 and registered on 6 July 1994,

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:

Commented [Note1]: Judges names are to be followed by a **COMMA** and a **MANUAL LINE BREAK** (Shift+Enter). When inserting names via *AltS* please remove the substitute judge's name, if necessary, and the extra paragraph return(s). (There is to be no extra space between the judges' names and that of the Section Registrar.)

THE FACTS

The applicant is a Polish citizen born in 1950.

The facts of the case, as submitted by the applicant, can be summarised as follows:

A. The circumstances of the case

1. The applicant's detention on remand

On 17 March 1994 the applicant was arrested. On 22 March 1994 the Gdańsk District Prosecutor detained him on remand on charges of armed robbery committed on 15 December 1993 against a post office in Gdańsk. The prosecutor referred to a danger of absconding and to the serious character of the offence concerned. On 11 April 1994 the Bielsko-Biała Regional Court dismissed the applicant's appeal against this decision.

On 21 April, 9 and 19 May 1994 the prosecutor refused to release the applicant.

From 22 March 1994 to 8 June 1994 the applicant served a prison sentence imposed by a judgment of the Częstochowa Regional Court of 19 July 1993, pursuant to which a fine had been imposed on him with 90 days' imprisonment in default.

On 7 June 1994 the Bielsko-Biała Regional Court prolonged the applicant's detention until 17 September 1994, referring in particular to new evidence gathered in the case since the beginning of the investigations which made the charges against the applicant and other accused plausible. The court further stressed that the suspects had probably been acting in an organised group, acting in a violent manner bordering on terrorism, and had unlawfully possessed weapons. The court further noted that various indications of criminal connections between the accused and other persons needed clarification.

On 16 August 1994 the Katowice Appellate Prosecutor dismissed the applicant's appeal against a refusal of 25 July 1994 to release him, considering in particular that the testimony of witnesses pointed to the applicant's guilt. On 2 September 19994 the Bielsko-Biała Regional Court prolonged detention on remand until 10 December 1994.

On 11 October 1994 the Bielsko-Biała Regional Prosecutor again refused to release the applicant. On 11 November 1994 the Katowice Appellate Prosecutor upheld this decision. On 2 December 1994 the applicant's detention was prolonged until 10 March 1995.

On 27 December 1994 the Bielsko-Biała Regional Prosecutor refused to release the applicant, referring to evidence gathered in the investigations, which supported suspicion against the applicant and to the danger of absconding.

On 28 December 1994 the Katowice Court of Appeal dismissed the applicant's appeal against a decision prolonging his detention until 10 March 1995.

On 16 February 1995 and on 27 February 1995 the Katowice Appellate Prosecutor upheld this decision, finding in particular that the evidence gathered so far in the investigations strongly supported the suspicion against the applicant.

On 6 July 1995 the Bielsko-Biała Regional Court refused to release the applicant.

On 23 January 1996 the Bielsko-Biała Regional Court refused to release the applicant. On 14 February 1996 the Katowice Court of Appeal upheld the decision of 23 January 1996, considering in particular that the applicant's allegations that the evidence against him had been fabricated, should be seen in the light of the fact that it was ultimately for the court to assess evidence in criminal cases. The applicant's health had also been examined and it did not amount to an impediment to the applicant's continued detention.

On 6 March 1996 the Bielsko-Biała Regional Prosecutor lodged a bill of indictment, including two further charges of armed robbery with the Bielsko-Biała Regional Court to which the case had in the meantime been transferred.

On 7 March 1996 the Bielsko-Biała Regional Court refused to release the applicant, and on 27 March 1996 the Katowice Court of Appeal upheld this decision, considering that the arguments advanced by the applicant in his appeal were essentially the same which he had put forward before in the proceedings concerning his detention. The court noted that certain evidence had still to be taken, in particular as certain witnesses had failed to attend the hearings in order to be questioned. The court further noted that the facts which sufficed for a continuation of detention on remand were not of the same level of probability as those which could ultimately lead to a conviction. In the applicant's case there was enough evidence against him to justify his continued detention. The applicant's health had repeatedly been taken into consideration by the courts and assessed under Article 218 of the Code of Criminal Procedure.

On 26 July 1996 the Bielsko-Biała Regional Court rejected the applicant's request for release. The court recalled that the applicant's request for release had been examined by competent courts on numerous occasions, for the last time in March 1996. No changes had occurred since that time such as to justify the release, in particular as several witnesses from Częstochowa had failed to comply with the court's summonses. Moreover, the lawyer of another accused, M.S., had fallen ill, and M.S. had not consented to his being temporarily replaced by another lawyer. Thus, it was necessary to maintain the detention in order to ensure the proper course of the proceedings. Since the last judicial decision by which the lawfulness of the applicant's detention had been reviewed, he had twice been examined by an orthopaedist. The medical opinion of 18 July 1996 indicated that the applicant's pains had become less severe, that no muscular atrophy had been established and that he had a wider range of movement in his right arm than he had had before, thus, there were no grounds to release the applicant.

On an unspecified later date the applicant complained to the President of the Bielsko-Biała Regional Court that his detention was unlawful. In reply, he was informed by a letter of 8 August 1996 that pursuant to the provisions of the new Code of Criminal Procedure, detention on remand of persons arrested before 4 August 1996, whose length of detention had exceeded time-limits fixed by Article 222 of the new Code, could be maintained until 1 January 1997. In cases in which a request for prolongation of detention had been submitted by a competent court to the Supreme Court, detention was to be maintained until this request be examined by that court. Therefore there was nothing, showing that the applicant's detention was, or had become, unlawful.

On 11 September 1996 the Supreme Court refused to entertain the request of the Bielsko-Biała Regional Court for prolongation of the applicant's detention, considering that this request should have been given by way of an interlocutory decision and not by a court's administrative order. On 12 November 1996 the Bielsko-Biała Regional Court requested again that the applicant' detention be prolonged.

On 17 January 1997 the Supreme Court, at the motion of the Bielsko-Biała Regional Court, prolonged the applicant's detention until 31 March 1997. The court considered that the applicant had been arrested on 17 March 1994 and noted that from 22 March to 8 June 1994 he had been serving a prison sentence. Likewise, from 23 December 1995 to 11 January 1996 he had been serving another sentence. Consequently, he had been detained on remand for a period of two years, six months and twenty-seven days, which exceeded time-limits fixed by Article 222 of the new Code of Criminal Procedure. The Court further considered that the lawfulness of the applicant's detention had been repeatedly examined by the courts. In the light of the evidence gathered in the case, their arguments in support of the applicant's detention appeared correct and should be accepted as well-founded. The proceedings against the applicant could not have been terminated on the grounds which could not be effectively counteracted by the Regional Court, such as the fact that the applicant and other accused had submitted various requests for evidence to be taken, and that already when the proceedings were well advanced, for instance during the hearings held on 30 July and 30 and 31 October 1996. The Court further had regard to the fact that certain witnesses failed to comply with the court summonses. Therefore the grounds on which detention could be prolonged beyond periods fixed by the Code of Criminal Procedure, listed in Article 222 § 4 of the Code were obtained in the case and necessitated the prolongation of the applicant's detention.

On 7 March 1997 the Bielsko-Biała Regional Court convicted the applicant of three counts of armed robbery and sentenced him to seven years of imprisonment and a fine with twenty days of imprisonment in default.

On 28 November 1997 the Katowice Court of Appeal amended this judgment in part, in that it acquitted the applicant of one count of robbery, reduced his sentence to six years of imprisonment and upheld the judgment in its remainder.

On 30 January 1998 the applicant lodged a cassation appeal with the Supreme Court against the judgment of 28 November 1997.

On an unspecified later date the applicant was released.

2. The applicant's medical treatment

In July 1994 the applicant, at the prosecutor's request, was examined in the forensic medicine ward of the Regional Health Centre in Bielsko-Biała. It was established that he could remain in detention if appropriate medical care was given to him.

On 19 July 1994 the applicant was examined by a court medical expert.

On 5 December 1994 the Wadowice District Prosecutor refused to institute investigations concerning the alleged offence of refusal of medical care to the applicant, finding that, in fact, the applicant had been receiving appropriate care.

On 20 December 1994 the applicant was examined by a medical panel which did not find any counter-indications for his continued detention.

On an unspecified later date before January 1995 the applicant had been examined and consulted by specialists in the Kraków Prison Hospital.

By a letter of 18 January 1995 the Bielsko-Biała Regional Court- Penitentiary Division reminded the applicant that he had been examined by a court expert and that he had also been repeatedly examined by physicians of Wadowice prison. It had been demonstrated that his detention did not fall within the ambit of circumstances referred to in Article 218 of the Code of Criminal Procedure.

On 7 March 1995 the applicant was examined by a medical panel, composed of, *inter alia*, an orthopaedist and a surgeon, found that he could be maintained in custody.

On 17 May 1995 the Bielsko-Biała Regional Court ordered that the applicant should be examined by a physician, having a status of a court expert, and that a relevant expert opinion be prepared as to whether his continued detention on remand was compatible with his health.

In a report of 13 June 1995 the forensic medicine ward of the Regional Health Centre in Bielsko-Biała stated that the applicant, on numerous occasions, had been examined by physicians at the prison, that numerous medical analyses and additional examinations had been made, which, in essence, had shown that the applicant had not had any particular pathological symptoms. His complaints related in particular to frequent headaches and vertigos. The physicians had diagnosed him as suffering from discopathy. In conclusion, the applicant who also suffered from certain sequelae of a trauma to his right shoulder could remain in detention.

On an unspecified date before 11 October 1995 the applicant was examined by a neurologist and had had an electroencephalography, which had not showed any pathological changes.

By letters of 28 August 1995 and 20 October 1995 the applicant was informed by the Central Prison Administration that his complaints had been examined and that no lack of diligence had been established on the part of the prison medical services.

On an unspecified date the Bielsko-Biała Regional Court, having found that the applicant's health was not such as to justify a conclusion that his continued detention was incompatible with the requirements of Article 218 of the Code of Criminal Procedure, prolonged his detention until 10 March 1995.

By an opinion of 31 December 1995 the same court expert, who had already examined the applicant in July 1994 and in June 1995, stated that the applicant suffered from sequelae of trauma to his right shoulder, significant obesity, hypertension and heart condition. This syndrom in itself did not amount to a categorical counter-indication for the applicant's continued detention. However, the persistent pains in his shoulder necessitated that the rehabilitation be undertaken as soon as possible under the supervision of an experienced orthopaedist, either in a civil or in a prison hospital.

On 15 March 1996 a physician of the Bielsko-Biała District Detention Centre issued a medical certificate to the effect that the applicant was suffering from hypertension, and from sequelae of a trauma to his right shoulder, from discopathy and psoriasis. He was not rehabilitated, despite the orthopaedist's recommendation, as there was no such possibility in the conditions of the detention centre. He was also taking significant amounts of various medicines, which had not brought about any significant amelioration of his state.

On 15 April 1996 the applicant was admitted to the prison hospital of Bytom prison, but he refused to give his consent for staying there.

On 13 May 1996 the Bielsko-Biała District Prosecutor refused to institute criminal proceedings against persons responsible for the alleged offence of the applicant's unlawful deprivation of liberty in conditions which entailed danger to his health, finding that the applicant had been kept in detention on the basis of valid decisions of competent authorities, and that the lawfulness and justified character of his detention had repeatedly been examined in the context of various appeals filed by the applicant, also as to its alleged incompatibility with his health. The prosecutor concluded that no criminal offence had been committed.

On an unspecified date before July 1996 the applicant was put in the hospital of the Bytom prison. A medical opinion of 18 July 1996 stated that the applicant had complained about pains and limited movement of his right arm, caused by an accident, certain pains in his spine, headaches and lack of appetite. The applicant's condition necessitated a permanent pharmaceutical treatment of his hypertension and periodical treatment of his spine problems. Also, a treatment to bring his right shoulder to full efficiency was indicated. Apparently, the applicant's actual pains were less severe than he had reported. Likewise, the range of movement of his right shoulder seemed to be wider than complained of. The physician concluded that the applicant could be maintained in detention and that the necessary treatment could be provided by the prison medical services.

On 8 August 1996 the Bielsko-Biała Regional Prosecutor upheld this decision of 13 May 1996 finding, first, that there were no grounds on which to believe that the applicant's detention could be unlawful. It had repeatedly been reviewed by competent authorities who had found that the allegations of unlawfulness were ill-founded. It was emphasised that the applicant had very often been examined by prison physicians and that he had access to appropriate medical care, available in conditions of detention. The only limitation to this access concerned the rehabilitation treatment, but this was due simply to the fact that the detention centre was not in a position to ensure this kind of medical care to detained persons. This circumstance alone could not serve as a basis for the applicant's release as it had been established by way of expert medical opinions that his ailments were not severe enough to fall within the scope of Article 218 of the Code of Criminal Procedure. In conclusion, the applicant's allegations that his detention could amount to a criminal offence were entirely implausible and should be regarded as attempts to put pressure on the justice administration organs.

On 19 February 1997 a medical expert opinion was submitted to the Bielsko-Biała Regional Court. The expert had examined the applicant and analysed the entries in his voluminous medical records. He stated that the applicant suffered significant obesity, had sustained a trauma of his right shoulder with a persistent pain syndrome, had a light hypertension and very light decrease of audition, caused by slight damage of a hearing nerve. It transpired from the entries in the applicant's records that he had very often requested

medical advice and had been taking great quantities of painkillers and anti-inflammatory medicines. In conclusion, the applicant's ailments were not of such severity as to prevent him either from being detained on remand, or from serving a prison sentence. It was true that the rehabilitation treatment could not be provided in prison, and that, if postponed for a long time, this could lead to a gradual deterioration in the state in the applicant's arm.

B. Relevant domestic law and practice

1. Evolution of Polish criminal law in the relevant period

Polish criminal legislation was amended several times during the relevant period. The Code of Criminal Procedure enacted in 1973 ("old" Code) was replaced by a new Code of Criminal Procedure, adopted by Parliament (*Sejm*) on 6 June 1997, and which entered into force on 1 September 1998.

The "old" Code was significantly amended by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes. This Law entered into force on 1 January 1996. However, the entry into force of the provisions concerning imposition of detention on remand was postponed until 4 August 1996. In pursuance of these provisions, detention on remand was to be imposed by a judge (whereas before it was imposed by a prosecutor - see section 2 below).

The second amendment, effected by the Law of 1 December 1995 on Amendments to the Law of 29 June 1995 (commonly referred to as "the Interim Law of 1 December 1995") entered into force on 1 January 1996.

2. Preventive measures

The Code of Criminal Procedure ("old"), applicable at the relevant time, listed as "preventive measures", *inter alia*, detention on remand, bail and police supervision.

Articles 210 and 212 of the "old" Code of Criminal Procedure applicable at the relevant time provided that before the bill of indictment was transmitted to the court, detention on remand was imposed by the prosecutor. The decision to impose detention on remand could be appealed against, within a seven-day time-limit, to the court competent to deal with the merits of the case. In pursuance of Article 222 of the Code of Criminal Procedure, the prosecutor could order detention on remand for a period not exceeding three months. When, in view of the particular circumstances of the case, the investigations could not be terminated within this period, detention on remand could, if necessary, be prolonged by the court competent to deal with the merits of the case, upon the prosecutor's request, for a period not exceeding one year. This decision could be appealed against to a higher court.

After the bill of indictment was transmitted to the court, relevant orders were to be made by the court. A decision concerning preventive measures could be appealed to a higher court.

3. Grounds for detention on remand

Article 217 of the "old" Code of Criminal Procedure, as applicable at the relevant time, provided that a person could be held in detention on remand if there were serious grounds for believing that this person would abscond, did not have a permanent address or his/her identity could not be established. Further, detention could be imposed if there were serious grounds for believing that there was a risk of collusion or that an accused would otherwise jeopardise criminal proceedings. Finally, alternative grounds for detention on remand were either the fact that an accused was charged with an offence of a particular danger to society or that he was a recidivist within the meaning of the Criminal Code.

Pursuant to Article 218 of the "old" Code of Criminal Procedure, if there were no special considerations to the contrary, detention on remand should not be imposed or should be lifted, if it involved danger to life or limb or entailed particular hardship for a suspect or his family.

After the Interim Law of 1 December 1995 entered into force on 1 January 1996, grounds of imposition of detention on remand were restricted to situations in which there was a reasonable risk of absconding, or that a suspect would go into hiding, in particular when his identity could not be established or he had no permanent domicile. Secondly, detention could be imposed if there was a reasonable risk that the suspect would attempt to induce witnesses to give false testimony or to hinder the proper course of proceedings by any other unlawful means.

4. Proceedings to examine the lawfulness of detention on remand

At the material time there were three types of proceedings enabling a detainee to challenge the lawfulness of his detention and thus possibly obtain release. Under Article 221 § 2 of the "old" Code of Criminal Procedure he could appeal to a court against a detention order made by a prosecutor (see above). Under Article 222 §§ 2(1) and 3 he could appeal against a further decision by that court prolonging his detention on a prosecutor's request. Finally, under Article 214 an accused could at any time request the competent authority to quash or alter the preventive measure applied in his case. Such an application had to be decided by the prosecutor or, after the bill of indictment had been lodged with the court competent to deal with the case, by that court, within three days.

5. Statutory time-limits for detention on remand

Until 4 August 1996 the law did not fix any time-limits concerning detention on remand in judicial proceedings. During the investigations, the prosecutor could order detention for up to three months. Prolongation of this period was possible by a court order, for a period not exceeding one year, and for any further periods, by a decision of the Supreme Court given upon a request of the Prosecutor General

Article 222 of the Code of Criminal Procedure, as applicable from 4 August 1996, provided insofar as relevant:

> "3. The whole period of detention on remand until the date on which the first-instance court gives judgment may not exceed one year and six months in cases concerning 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 merits of the case, ... prolong detention on remand for a further fixed period exceeding the periods referred to § ... 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 within the time-limits set out in § 3."

However, under Article 10 (a) of the Interim Law of 1 December 1995 different rules applied in respect of persons whose detention on remand started prior to 4 August 1996. This article 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 maintained in detention until the Supreme Court gives a decision on a request for prolongation of such detention under Article 222 § 4 of the Code of Criminal Procedure.
>
> 2. In cases referred to in § 1, if no [such] request has been lodged, detention shall be lifted not later than 1 January 1997."

Under all the relevant provisions of the Code of Criminal Procedure 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 judicial stage of proceedings. However, no appeal lay in law either against a decision containing a request under Article 222 § 4, or against a decision of the Supreme Court granting such a request.

COMPLAINTS

The applicant complains, invoking Article 2 of the Convention, that he did not have adequate medical treatment in prison and that this exposed him to a genuine risk of a permanent and serious deterioration of his health. He argues that his condition necessitated rehabilitation in a specialised health establishment and that the fact that he was detained made it impossible for him to receive an effective treatment. He was suffering acutely and the prison medical services limited themselves to administering to him pain-killers and anti-inflammatory medicines.

The applicant further complains under Article 5 of the Convention that his detention on remand was unlawful in that the evidence did not support the charges against him in an adequate manner. He argues, in particular, that the second-instance court acquitted him of the charges of robbery against the Gdańsk post office, which shows clearly that he should not have been detained at all.

The applicant finally complains under Article 6 of the Convention that the prosecuting authorities entirely disregarded all evidence which would exonerate him; that he was not confronted with certain witnesses, that he was not given access to the case-file, that the minutes of questioning of the witnesses during the investigations were taken in a biased manner, that the prosecution and the courts wrongly assessed evidence and made erroneous conclusions.

THE LAW

1. The applicant complains, invoking Article 2 of the Convention, that he did not have adequate medical treatment in prison and that this exposed him to a genuine risk of a permanent and serious deterioration of his health.

The Court has examined this complaint under Article 3 of the Convention which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

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 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 (see Bonnechaux v. Switzerland, Eur. Comm. HR, Report 5.12.1979, D.R. 18, pp. 100 and 148; Lukanov v. Bulgaria, Eur. Comm. HR, Dec. 12.1.1995, D.R. 80-A, pp. 128-130; *Zdebski et al. v. Poland (dec.)*, no. 27748/95; 6.04.2000).

Turning to the circumstances of the present case, the Court observes that the applicant repeatedly complained to the prison medical services about his ailments. It transpires from his medical records that he was often examined by the prison physicians and that various medication was administered to him.

It was established that the applicant was suffering from certain ailments, but on no occasion had it been stated by health professionals that they were of such severity as to entail any serious danger to the applicant's health.

It is further noted that following the applicant's complaints the authorities before which his case was pending ordered on several occasions that a comprehensive medical assessment of the applicant's condition be effected by a court expert. For example, the applicant was examined by a physician having the status of a court expert, in July 1994, in May 1995 and in December 1995. Lastly, in February 1997 a further medical opinion drawn up by an expert was submitted to the Bielsko-Biała Regional Court. All these reports were prepared with a view to establishing whether the applicant's detention was compatible

with his health, and none contained a categorical conclusion to the effect that the applicant could not be maintained in detention.

The Court's attention has also been drawn to the fact that during his detention the applicant was treated at a prison hospital and consulted by hospital specialists, for the first time at an unspecified date before January 1995, and, later on, apparently before July 1996, he was also placed in the hospital of the Bytom prison.

Finally, the applicant's complaints were also examined in the context of the applicant's complaints that a criminal offence had been committed in that the relevant services had failed to afford appropriate medical care to him. Both the first- and second-instance prosecutors, having examined the applicant's medical records, found that no criminal offence had been committed. The decisions of the prosecution authorities further referred to the fact that the applicant's complaints had repeatedly been examined under Article 218 of the then applicable Code of Criminal Procedure and that on no occasion had it been found that the applicant's continued detention entailed for him a particular hardship within the meaning of this provision.

The Court concludes that there is no indication that the applicant's condition was incompatible with his detention. The applicant has not adduced any evidence to show that his complaints were wrongfully disregarded by prison authorities, or that they were negligent in administering the medical treatment to him.

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.

2. The applicant further complains under Article 5 of the Convention that his detention on remand was unlawful in that evidence against him did not support the charges against him in an adequate manner. He argues, in particular, that the second-instance court acquitted him of the charges of robbery against the Gdańsk post office, which shows clearly that he should not have been detained at all.

Article 5 of the Convention, insofar as relevant, reads:

> "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 recalls that the "reasonableness" of the suspicion on which an arrest must be based forms an essential element of the safeguard against arbitrary arrest and detention. Having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (cf. the Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

As to the level of “suspicion”, Article 5 § 3(c) of the Convention does not presuppose that the investigating authorities should have obtained sufficient evidence to bring charges, either at the time of the arrest of while the arrested person is in custody. The object of questioning during detention under Article 5 § 3(c) of the Convention is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation. The existence or not of a reasonable suspicion in a concrete instance depends ultimately on the particular facts (cf. the Murray v. the United Kingdom judgment of 28 October 1994, Series A no. 300-A, p. 27, §§ 55 and 57).

In the light of all the material in its possession the Court does not find any indication that the applicant’s detention was unlawful or ordered otherwise than "in accordance with a procedure prescribed by law", within the meaning of Article 5 § 1. The Court considers that it was ordered and confirmed in accordance with domestic law and fell within the ambit of Article 5 § 1(c) of the Convention, as having been effected for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence. As regards the alleged lack of reasonable suspicion, the Court notes that in fact the relevant decisions referred to evidence gathered in the course of the proceedings. On the whole, the Court is not persuaded by the applicant’s arguments in this respect. It is true that the charges against him underwent certain modifications during the preliminary investigation in that new charges were subsequently added to the original ones. However, the lawfulness of the applicant’s detention was on many occasions reviewed by competent prosecution and judicial authorities, including the Supreme Court, and was considered lawful and justified. There is nothing in the reasoning of the domestic authorities, which could be regarded as arbitrary or unreasonable, or as lacking a factual basis.

In conclusion, the Court considers that the charges laid against the applicant, both the initial ones and those which ultimately led to the applicant’s conviction, were based on a reasonable suspicion of his having committed criminal offences punishable under the Polish Criminal Code. The mere fact that the applicant was finally acquitted by the second-instance court from charges of one count of armed robbery which served as a principal basis of the decision of 22 March 1994 to remand the applicant in custody is not sufficient for a finding that this rendered the detention unlawful or arbitrary.

It follows that the complaint under Article 5 § 1 is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicant finally complains under Article 6 of the Convention that the prosecuting authorities entirely disregarded all evidence which would exonerate him; that he was not confronted with certain witnesses, that he was not given access to the case-file, that the minutes of questioning of the witnesses during the investigations were taken in a biased manner, that the prosecution and the courts wrongly assessed evidence and took erroneous conclusions.

Under Article 35 of the Convention the Court “may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law”.

The Court first notes that the applicant's complaints concerning the alleged breaches of his right to a fair hearing seem to be primarily directed against the conduct of the prosecuting authorities in the investigative stage of the proceedings. However, even assuming that they also relate to the judicial proceedings in the applicant's case, the Court notes that the applicant has not shown that a final judgment has been given following the applicant's cassation appeal to the Supreme Court. The applicant has not shown, therefore, that he exhausted relevant domestic remedies and this part of the application must be declared inadmissible pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President