CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40707/98
by Andrzej SKOWIERŻAK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 10 September 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 20 March 1998,

Having deliberated, decides as follows:

THE FACTS

The applicant, Andrzej Skowierzak, is a Polish national, who was born in 1940 and lives in Kielce, Poland. He is represented before the Court by Mr Adam Włoch, a lawyer practising in Kraków. The respondent Government are represented by Mr K. Drzewicki, of the Ministry of Foreign Affairs.

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

On 2 October 1995 the Kielce Regional Prosecutor (*prokurator wojewódzki*) instituted an investigation in regard to suspected child trafficking. Between 2 and 15 October 1995 the prosecutor heard five witnesses and conducted several other procedural activities, including the appointment of interpreters for two Swedish nationals to be heard in the case. The applicant submits that those two foreigners were Mr U. K., who was one of the accused persons, and his wife.

On 12 October 1995 the prosecutor charged the applicant with child trafficking and incitement to false testimony.

On 13 October 1995 the applicant was heard. On the same date the prosecutor appointed two medical experts in order to assess whether the applicant's state of health prevented him from being kept in detention. They found no medical obstacles to the applicant's detention.

On 17 October 1995 the prosecutor remanded him in custody. Between 17 October and 16 November 1995 the prosecutor interrogated other suspects and witnesses in the case.

On 16 November 1995 the prosecutor decided to submit a letter rogatory to competent authorities in Sweden requesting the examination of two witnesses. The applicant submits that those letters concerned K. K., who had been previously heard in the case, and J. N., who was counsel for U. K.

The applicant appealed against the decision to remand him in custody, but on 23 November 1995 the Kielce Regional Court (*sąd wojewódzki*) dismissed his appeal.

On 30 November 1995 an expert in cardiology, having been so ordered by the prosecutor, prepared an opinion, according to which the applicant should not be kept in detention.

On 11 December 1995 the applicant was released on bail.

In December 1995 the prosecutor heard further witnesses.

On 10 January 1996 she decided to prolong the investigation, relying, among other reasons, on the Swedish authorities' failure to carry out the letter rogatory.

On 26 January 1996 the prosecutor refused the applicant's request to be released from the bail requirements. On 29 February 1996 his appeal against that decision was dismissed.

On 7 February 1996 the prosecutor brought charges against another individual.

On 29 February and 22 April 1996 the investigation was further prolonged in view of the Swedish authorities' failure to execute the letter rogatory.

On 21 June 1996 the prosecutor refused the applicant's further request to be released from the bail requirements.

Subsequently, on three occasions the prosecutor again prolonged the investigation, relying each time on the difficulties with the execution of the letter rogatory.

On 7 February 1997 the prosecutor refused the applicant's further request for release from the bail requirements. His appeal against that decision was dismissed on 17 March 1997.

On 27 March 1997 the testimony given by the two Swedish witnesses was submitted to the Kielce Regional Prosecutor.

On 24 May 1997 the prosecutor decided that a part of the case would be examined in a separate set of proceedings.

On 26 May 1997 the applicant notified the Minister of Justice about criminal offences allegedly committed, *inter alia*, by the Kielce Regional Prosecutor in the course of the investigation.

On 23 June 1997 the prosecutor rejected an evidence motion submitted by the applicant.

On 30 June 1997 the prosecutor submitted to the Kielce Regional Court the bill of indictment. The indictment comprised allegations in respect of four individuals, including the applicant. One of them was a Swedish national. The prosecutor requested the court to summon 15 witnesses, including two Swedish nationals.

On 2 July 1997 the Regional Court requested the Supreme Court to transmit the case to another court.

On 7 August 1997 the Supreme Court transferred the case to the Kraków Regional Court, relying on the fact that the applicant was a lawyer practising in the region covered by the Kielce Regional Court's jurisdiction.

On 8 January 1998 the Kraków Regional Court dismissed the applicant's and another accused person's requests for the discontinuance of the proceedings.

The hearing scheduled for 24 February 1998 was adjourned *sine die* because of the absence of U. K. In March U. K. submitted a sick certificate.

On 18 January 1999 the President of the Regional Court assigned a judge to replace one of the judges in the applicant's case, who had retired.

The hearing scheduled for 10 August 1999 was adjourned because of U. K.'s continuing absence.

On 1 September 1999 the court requested the Regional Courts in Poznań and Warsaw to submit case files of criminal cases similar to the applicant's case, examined by those courts.

On 8 October 1999 the court refused the applicant's further request for the discontinuance of the proceedings.

U. K. failed to attend the hearing held on 8 October 1999 and the court decided to adjourn the examination of the charges against him to a separate set of proceedings.

At the hearing held on 9 November 1999 the court imposed a fine on witness E. N., who was a victim in the case, for her failure to attend the hearing despite having been duly summoned. Subsequently, her mother informed the court that E. N. resided abroad and she would not attend the hearing scheduled for 8 December 1999.

On 8 December 1999 the court held a hearing.

On 11 January 2000 it ordered the police of E. N.'s place of residence to submit information concerning her whereabouts.

The court held a hearing on 12 January 2000. It fined two witnesses who failed to appear before it although duly summoned.

The court held further hearings on 16 February and 21 March 2000.

Subsequently, the presiding judge fixed the dates of further hearings for 4 and 12 May 2000, anticipating a possibility to examine witness E. N. She could not be heard on the former date and the hearing scheduled for that date did not take place.

The court heard E. N. at the hearing on 12 May 2000.

It held another hearing on 9 June 2000.

On 16 June 2000 the court gave judgment. The applicant was convicted of inciting U. K. and K. K. to give false testimony and sentenced to one year and six months' imprisonment, suspended for two years. He was acquitted of child trafficking. The judgment was accompanied by 125 pages of reasoning. The applicant, as well as one of the other accused persons and the prosecutor, appealed.

On 8 March 2001 the Kraków Court of Appeal (*sąd apelacyjny*) acquitted the applicant of inciting U. K. to give false testimony. It dismissed the remainder of his appeal.

COMPLAINT

The applicant complains under Article 6 of the Convention that the proceedings exceeded a reasonable time.

THE LAW

The applicant complains about the allegedly excessive length of the criminal proceedings against him and invokes Article 6 of the Convention, which 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..."

Period to be taken into consideration

The Court first observes that from the parties' submissions it is not clear whether the applicant was notified about the instituting of the investigation before the charges were officially brought against him. In the absence of information to the effect that any decisions given before the date of the

official notification of the charges had negatively affected the applicant's situation (cf. *Włoch v. Poland*, no. 27785/95, §§ 144 and 145, ECHR 2000-XI), the Court takes that date as the beginning of the period to be taken into consideration. The proceedings therefore lasted 5 years, 4 months and 27 days.

Arguments of the parties

The Government are of the opinion that the case at issue was very complex, because it concerned charges of child trafficking, as to which no standing case-law existed. They further note that four persons were convicted in the proceedings and that the reasoning of the first-instance judgment consisted of 125 pages.

The Government observe that the participation of a foreigner in the proceedings necessitated the translation of the most important parts of the case file into a foreign language and the assistance of an interpreter at interrogations. They mention U. K.'s absence at hearings in 1998 and 1999, as well as the difficulties in the execution of the letter rogatory by the Swedish authorities. The Government make reference to E. N.'s failure to appear at hearings.

They maintain that the applicant was detained only at the initial stage of the proceedings and for the period of 1 month and 24 days. Subsequently, he was at liberty and the Government are of the opinion that "special diligence" was not required in the case at issue.

They note that the Kielce Regional Public Prosecutor and the Kraków Regional Court showed due diligence in the course of the proceedings. The investigation was completed within 1 year, 8 months and 18 days and the only reason why it had to be prolonged between 10 January 1996 and 27 March 1997 was the excessive length of the execution of the letter rogatory by the Swedish authorities. Having obtained the requested testimony from those authorities, on 27 March 1997, the prosecutor finished the investigation within three months.

The Government observe that the judicial phase of the proceedings lasted 3 years, 8 months and 8 days, comprising the examination of the case by courts at two judicial levels. Between 30 June 1997, when the proceedings were initiated, and 24 February 1998, when the first hearing was held, the Supreme Court and the Kraków Regional Court examined the issues of the jurisdiction over the case and the applicant's request for the discontinuance of the proceedings.

The Government note that three initial hearings, as well as the hearings scheduled for 4 May 2000, were adjourned for reasons not attributable to the domestic courts. They underline that the Regional Court could not open the trial for 1 year and 8 months because of U. K.'s failure to appear before it. The Government point out that the Regional Court showed due diligence

in establishing E. N.'s whereabouts and imposing fines on witnesses for their failure to attend hearings.

As regards the conduct of the applicant, the Government are of the view that he contributed to some extent to the prolongation of the proceedings by lodging motions for the discontinuance of the proceedings and petitions concerning the bail. They make reference to the applicant's complaint to the Ministry of Justice about crimes allegedly committed by the Regional Prosecutor.

The applicant does not agree that the case was complex. He submits that the letter rogatory concerned the interrogation of K. K., who had been heard in the case in October 1995, as well as U. K.'s defence counsel. The applicant maintains that the execution of that letter rogatory was not necessary, because the Regional Prosecutor had obtained all relevant information already during his first interrogation of K. K.

The applicant is of the opinion that the charges laid against him were based on an unacceptable interpretation of the provisions of the Criminal Code. He mentions the fact that he was eventually acquitted, which in his view shows that those charges were laid arbitrarily. The applicant further notes that the case was not a new one and makes reference to other similar cases in which the acts committed by the accused persons were not considered as criminal offences. He attached copies of relevant court decisions.

The applicant points out that the Regional Prosecutor, unlike in the case of Mr Włoch (*Włoch v. Poland*, cited above, §§ 140, 141 and 150) did not undertake any measures to expedite the execution of the letter rogatory. He notes that after the obtaining of the testimony from Sweden the investigation lasted 7 months, which could not be justified by the complexity of the case.

As regards the judicial phase of the proceedings, the applicant maintains that his petition for the discontinuance of the proceedings was well founded. He notes that the court examined that petition for 5 months.

The applicant is of the opinion that the decision to exclude the examination of the charges against U. K. should have been made earlier. He further states that in order to discipline the witnesses the Regional Court could have adopted measures more effective than fines, such as, for example, bringing the witnesses to the court.

The applicant denies having contributed to the delay and argues that the petitions to which the Government referred were his only means of defence against, in his opinion, absurd charges laid against him. He submits that the judgment of the Court of Appeal only confirms how absurd they were.

The Court's assessment

The Court recalls that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular 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, *inter alia*, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

The Court accepts the Government's contention that the number of accused persons and the presence of a foreigner among them increased the complexity of the case to a certain extent. However, in the light of the applicant's statement that there actually existed some case-law in cases concerning child trafficking, it is not fully persuaded that the complexity was caused by the case's alleged unprecedented nature. On the other hand, the Court notes that the applicant was charged also with another count.

The Court agrees with the Government that the applicant's conduct contributed to a certain extent to the delay, especially his complaint about the crimes allegedly committed by the Regional Prosecutor, which does not seem to be a typical procedural remedy.

The Court observes that the prolongation of the investigation was caused mainly by delays in the execution of the letter rogatory, for which the respondent Government cannot be held responsible. It further notes that the Kraków Regional Court undertook appropriate measures aimed at expediting the proceedings and avoiding delays caused by the participants to the proceedings' failure to attend hearings. The Court however agrees with the applicant that the examination of the charges against U. K. should have been adjourned to a separate set of proceedings at an earlier stage, thereby avoiding the delay to the proceedings caused by U. K.'s prolonged absence.

Having regard to the overall duration of the procedure and the above considerations, the Court finds the complaint concerning the allegedly unreasonable length of those proceedings manifestly ill-founded and rejects it, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President