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. 32499/96
by Z.R.
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 October 2000 as a Chamber composed of

Mr G. Ress, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mr J. Hedigan, *judges*,

and Mr V. Berger, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 22 July 1996 and registered on 5 August 1996,

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 regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Polish national, born in 1960 and living in Szczecin (Poland). He is represented before the Court by Mrs Romana Orlikowska-Wrońska, a lawyer practising in Sopot (Poland).

A. The circumstances of the case

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

On 20 October 1994 the applicant was arrested. On 22 October 1994 the Stargard Szczeciński District Prosecutor (*Prokurator Rejonowy*) remanded him in custody on suspicion of forging motor vehicles' registration documents. The prosecuting authorities suspected that the applicant took part in a criminal organisation which stole motor vehicles. In addition, they considered that the offence in question caused a significant danger to society, that the applicant could put witnesses under pressure to give false evidence and otherwise interfere with the investigation. The applicant did not appeal against that decision.

On 28 October 1994 the applicant appointed counsel.

On 14 November 1994 the Stargard Szczeciński District Prosecutor prolonged the applicant's detention until 20 January 1995.

On 28 November 1994 the applicant applied to the Szczecin Regional Court (*Sąd Wojewódzki*) for release from detention. On the same date the court rejected his application.

On 30 December 1994 the Szczecin Regional Court decided to extend the applicant's detention until 4 April 1995. The applicant appealed that decision. On 3 February 1995 the Poznań Court of Appeal (*Sąd Apelacyjny*) rejected his appeal. The court pointed out that the taking of evidence in the case had not been finished. In this connection, the Government submit that the applicant's detention was also justified by the fact that the police failed to apprehend all the applicant's accomplices.

On 22 June 1995 the Szczecin Regional Court allowed the prosecutor's request, and prolonged the applicant's detention until 30 September 1995. The applicant appealed that decision. On 27 July 1995 the Poznań Court of Appeal dismissed his appeal.

On 19 August and 18 September 1995 the Szczecin Regional Prosecutor charged the applicant with respectively twelve and eight additional criminal offences.

On 29 September 1995 the Szczecin Regional Prosecutor lodged with the Szczecin Regional Court a bill of indictment against the applicant and his seven accomplices.

In November 1995 the applicant applied to the Szczecin Regional Court for release from detention. He submitted that, in view of the fact that the investigation had been completed and the bill of indictment had been lodged with the court, his continued detention had ceased to be justified. The court refused his application.

On 22 May 1996 the applicant asked the Szczecin Regional Court to replace his detention with police supervision. He submitted that his detention was incompatible with Article 218 of the Code of Criminal Procedure in that his family was in a difficult financial situation and his mother had been hospitalised. He also pointed out that he had already been in detention for eighteen months.

On 28 May 1996 the Szczecin Regional Court dismissed the applicant's request of 22 May 1996. The court accepted the applicant's submission that the financial situation of his family had deteriorated, but considered that this was a normal consequence of detention of any family member. The court was also of the view that the evidence collected in the course of the proceedings showed that charges laid against the applicant were justified. Finally, it considered that the applicant's detention was necessary in order to prevent collusion or other unlawful interferences with the proceedings.

On 11 June 1996 the applicant appealed to the Poznań Court of Appeal against that decision. He pointed out that the reasons for his detention given by the Regional Court were very succinct. The applicant referred to the new legislation, which was to enter into force on 4 August 1996, and which required a decision of the Supreme Court (*Sąd Najwyższy*) to extend detention on remand beyond two years. He further submitted that his detention amounted to his *de facto* imprisonment without a conviction. Moreover, the applicant, referring to Article 218 of the Code of Criminal Procedure, questioned the Regional Court's assessment of hardship caused to his family by his detention. The applicant also argued that the appealed decision did not provide any reasons for the court's opinion that there existed risk of collusion and other unlawful interference with the proceedings.

On 4 July 1996 the Poznań Court of Appeal dismissed the applicant's appeal. The court observed that the applicant was charged with serious criminal offences which involved a significant danger to society. Moreover, the new legislation, which was to enter into force on 4 August 1996, did not have to lead to the applicant's release, as the Supreme Court would have the power to prolong his detention. The court further pointed out that the other defendants who were not detained obstructed the proceedings, as they failed to attend hearings. Finally, the Court of Appeal was of the view that the situation of the applicant's family did not disclose extreme hardship requiring his release under Article 218 of the Code of Criminal Procedure.

On 12 July 1996 the applicant's wife complained to the Ombudsman about the unreasonable length of his detention. She claimed that he was innocent and his detention lacked any grounds.

On 29 July 1996 the applicant filed with the Szczecin Regional Court a fresh application for release from detention. He again emphasised the difficult situation of his family. The applicant also submitted that his detention on remand had ceased to serve its purpose, as the investigation had been completed and evidence had been taken. He could not therefore do anything to jeopardise the proceedings. Moreover, the applicant insisted that he would not interfere with the proceedings and would not go into hiding. In this connection, he requested the court to indicate reasons which had led it to believe that he would interfere with the proceedings. The applicant further complained that the courts had not allowed other preventive measures, such as police supervision or bail.

On 2 August 1996 the Szczecin Regional Court dismissed the application. The court referred to previous decisions declining his applications for release and pointed out that he was charged with several offences. The court also referred to the nature of the offences, circumstances in which they were committed and the fact that the charges against the applicant were brought under Article 60 § 1 of the Criminal Code which concerned habitual offenders.

On 11 August 1996 the applicant appealed to the Poznań Court of Appeal against that decision. He pointed out that the Regional Court erroneously considered that he was a habitual offender since he did not have criminal record. In addition, he called into question the credibility of evidence given by one of the witnesses.

On 28 August 1996 the Poznań Court of Appeal dismissed the appeal. It observed that the case was very complicated, as it involved several charges and numerous co-defendants who allegedly formed a criminal organisation. As a result, the proceedings were lengthy and interrupted by numerous adjournments. The court also considered that the submissions made by the applicant in his appeal showed that he was aware of the existence of serious evidence of his guilt. Such evidence justified the applicant's detention under Article 209 of the Code of Criminal Procedure. In addition, the Court of Appeal agreed with the Regional Court's view that the applicant's detention did not cause extreme hardship to his family. Finally, it observed that the detention was already long and that the new legislation, which had come into force in August 1996, might require the re-examination of all relevant aspects of the applicant's detention if the proceedings before the trial court were not concluded in the near future.

On 18 September 1996 the applicant again applied to the Szczecin Regional Court for release from detention. He recalled the decisions taken in respect of his detention on remand to date and the grounds relied on by the courts. The applicant also pointed out that one of those grounds, a significant danger to society caused by the offences with which he was charged, could not be invoked under the new criminal legislation. He further referred to the Regional Court's statement in its decision of 4 July 1996 that other accused had been obstructing the conduct of the proceedings by failing to attend hearings. The applicant argued that it could not be reasonably held against him and could not justify his continued detention. Furthermore, he submitted that the court had erroneously considered that he had been a habitual offender. The applicant pointed out that it was difficult to see how the proceedings could end in the near future since his case involved more than forty defendants and over three hundred stolen motor vehicles. Finally, he complained that the new criminal legislation did not allow such long detention on remand.

On 20 September 1996 the Szczecin Regional Court dismissed the application. It considered that although the applicant's guilt would be decided by the trial court, there existed serious evidence of his guilt and therefore his detention was justified.

On 7 January 1997 the Supreme Court extended the applicant's detention until 30 April 1997 considering that it was necessary to ensure the proper conduct of the proceedings.

On 11 April 1997 the Szczecin Regional Court convicted the applicant of aggravated theft, forgery of documents and use of forged documents, handling stolen goods and fraud. It also sentenced him to a six-year prison term. On an unspecified date the applicant appealed that judgment.

After his conviction by the trial court the applicant applied several times for release. Between 27 June 1997 and 18 December 1997 the courts on five occasions refused his applications.

On 18 December 1997 the Poznań Court of Appeal dismissed the applicant's appeal against the judgment of the trial court. On 27 January 1998 the applicant lodged with the Supreme Court an appeal on points of law.

B. Relevant domestic law

1. Preventive measures

At the material time, the 1969 Code of Criminal Procedure listed as preventive measures, *inter alia,* detention on remand, bail and police supervision. Article 209 of the Code, which set out general grounds justifying the imposition of preventive measures, provided as follows:

> "Preventive measures may be imposed in order to secure the proper course of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence."

Furthermore, the Code of Criminal Procedure allowed authorities a margin of discretion as to whether to continue the enforcement of preventive measures. Detention on remand was regarded as the most severe preventive measure. Article 213 of the Code provided as follows:

> "A preventive measure shall be immediately quashed or changed if the grounds therefor have ceased to exist or if new circumstances have arisen, which justify quashing a given measure or replacing it with one that is either more or less severe."

Article 225 of the Code provided:

> "Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of these measures, are considered adequate."

Article 217 of the Code, before it was amended on 1 January 1996, provided insofar as relevant:

> "Detention on remand may be imposed if:
>
> 1. there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent domicile, or

2. there is a reasonable risk that he will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means, or
3. the accused was charged with a commission of a criminal offence or acted as a habitual offender, as provided for by the Criminal Code, or
4. the accused was charged with the commission of an act which constituted significant danger to society."

Article 218 provided:

"If there are no special reasons to the contrary, detention on remand should be quashed, in particular, when:

(1) it may seriously jeopardise the life or health of the accused; or

(2) it would entail excessively burdensome effects for the accused or his family."

Until 4 August 1996, when the Code of Criminal Procedure was amended, Polish law did not set out any statutory time-limits concerning detention on remand in court proceedings but only in respect of the investigative stage.

Article 222 of the Code of Criminal Procedure, as applicable after 4 August 1996, provided insofar 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."

Subsequently, paragraph 4 was extended to include also "other significant circumstances, which could not be overcome by the organs conducting the proceedings".

2. Proceedings to examine the lawfulness of detention on remand.

At the material time applications for release from pre-trial detention and requests for prolongation of detention were examined by courts in sessions held *in camera*. Article 88 of the 1969 Code of Criminal Procedure provided as follows:

"A court session *in camera* may be attended by a prosecutor who may also make written submissions; other parties may attend if the law provides for it."

3. Request for compensation for unjustified detention.

At the material time, Chapter 50 of the Code of Criminal Procedure, entitled "Compensation for unjustified conviction, detention on remand or arrest", provided that the State was liable for wrongful convictions or for unjustified deprivations of liberty of individuals in the course of criminal proceedings against them.

Article 487 of the Code of Criminal Procedure (as amended) provided, insofar as relevant:

> "1. An accused who, as a result of the reopening of the criminal proceedings against him or of lodging a cassation appeal, has been acquitted or resentenced under a more lenient substantive provision, shall be entitled to compensation from the State Treasury for the damage which he has suffered in consequence of having served the whole or a part of the sentence imposed on him.
> ...
>
> 4. The provisions of the present chapter shall be applied by analogy to manifestly unjustified arrest or detention on remand."

According to Article 489 of the Code, a request for compensation for manifestly unjustified detention on remand must have been lodged within one year from the date on which the final decision terminating the criminal proceedings in question had become final and valid in law.

Since 1 September 1998, when the new Code of Criminal Procedure entered into force, the regulation of compensation for unjustified detention has been covered by Chapter 58 of the new Code.

4. Larceny and handling stolen goods.

Article 208 of the 1969 Criminal Code provides prison terms ranging from one to ten years for the commission of larceny.

Under Article 215 § 1 of the Code handling stolen gods is punished with imprisonment for a period from six months to five years.

COMPLAINTS

The applicant complains under Article 5 § 3 of the Convention about the length of his detention on remand. He also complains under Article 5 § 4 that he was never brought before a court in the proceedings concerning judicial review of his detention.

Furthermore, the applicant claims that the criminal proceedings against him exceeded a reasonable time in breach of Article 6 § 1 of the Convention.

Finally, the applicant complains under Article 13 of the Convention that all his remedies in respect of his detention on remand proved ineffective as all courts dismissed his requests for release.

THE LAW

1. The Government firstly submit that the applicant's complaints under Article 5 of the Convention are inadmissible under Article 35 § 1 of the Convention because of his failure to exhaust domestic remedies. Article 35 § 1, in so far as relevant, reads as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted (...)"

They point out that at the material time Chapter 50 of the Code of Criminal Procedure provided a right to compensation for manifestly unjustified detention on remand. The Polish courts consider an action for compensation to be an effective remedy in cases of unjustified detention. In this connection, the Government refer to the Supreme Court's judgment of 6 February 1981 which states that compensation can be awarded only when detention on remand lacked any reasonable factual or legal basis.

The applicant disagrees with the Government's submission that he failed to exhaust domestic remedies. He points out that he appealed all decisions concerning his detention on remand. In addition, he submits that a distinction should be made between the rights provided by paragraph 3 and paragraph 5 of Article 5. Whereas the former provision requires a provisional release of a detainee once continuing detention ceased to be reasonable, the latter ensures that a victim of unlawful detention has an enforceable right to compensation. Moreover, the applicant avers that it is clear from the judgment of the Supreme Court referred to by the Government that he did not have any chances of obtaining compensation, as it could be awarded only in cases where detention on remand lacked any factual or legal basis.

The Court recalls that the only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied. Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, among other authorities, *T.W. v. Malta* [GC], no. 25644/94, 29.4.99, § 34, unreported).

The Court notes the Government's submission that the applicant should have sought compensation for manifestly unjustified detention in order to exhaust domestic remedies. However, it observes that it is difficult to see its relevance to the circumstances of the instant case. In particular, the Government refer to the Supreme Court's case-law which requires the absence of any reasonable factual or legal basis of detention for an award of compensation. But they fail to explain how the applicant, with his conviction on charges which led to his detention, could possibly succeed in meeting that requirement.

In any event, the Court observes that under Article 5 the applicant firstly complains of the excessive length of his pre-trial detention, not that he had no legal remedies whereby he could obtain compensation for detention. The applicant's complaint therefore goes to Article 5 § 3 of the Convention, whereas the remedy mentioned by the Government concerns Article 5 § 5 only (see, *mutatis mutandis*, the Demir and Others v. Turkey judgment of

23 September 1998, *Reports of Judgments and Decisions*, 1996-IV, pp. 2652-2653, § 37). Similarly, the second of the applicant's complaints under Article 5 relates to the fact that he was never brought before a court in the proceedings concerning judicial review of his detention and therefore goes to Article 5 § 4.

It follows that the Government's preliminary objection is without foundation and must be dismissed.

2. The applicant complains under Article 5 § 3 of the Convention about the length of his detention. Article 5 § 3, in so far as relevant, provides:

> "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."

The Government firstly submit that the Court should take into account the applicant's detention on remand between 22 October 1994, when he was remanded in custody, and 11 April 1997, when he was convicted by the trail court. They point out that under Articles 208 and 215 § 1 of the Criminal Code the charges laid against the applicant could result in sentences ranging from one to ten years and from six months to five years, respectively. Furthermore, the Government aver that the applicant's detention was justified by reasonable suspicion that he committed offences with which he was charged. In addition, the offences caused a significant danger to society and there were serious grounds for believing that the applicant would tamper with evidence. In this connection, the Government point out that the prosecuting authorities modified on 19 August and 18 September 1995 charges laid against the applicant.

Furthermore, the Government submit that the applicant's case was complex. It concerned about five hundred criminal acts committed by the criminal organisation in which the applicant was involved, as well as a large number of accomplices, victims, witnesses and experts. They also observe that despite "the fact that there were serious grounds to believe that the applicant had committed the offences with which he had been charged he did not plead guilty".

The Government admit that the applicant on numerous occasions applied for release on the ground that his detention led to a difficult situation of his family. However, they agree with the domestic courts' finding that it was "a natural and foreseeable consequence" of remanding him in custody.

The Government conclude that domestic courts diligently examined the applicant's numerous requests for release, which in their opinion did not refer to any new facts justifying his release. Accordingly, the applicant's detention on remand satisfied the requirements of Article 5 § 3 of the Convention.

The applicant agrees with the Government's submission that the relevant period of his detention started on 22 October 1994 and ended on 11 April 1997. He also agrees that the decision to remand him in custody was justified by reasonable suspicion that he had committed the offences with which he was charged. However, the applicant points out that over the time reasonable suspicion ceased to justify his detention. He also disagrees with the Government's argument that his release would prompt him to tamper with evidence. In this

connection, the applicant avers that after the bill of indictment had been lodged with the Szczecin Regional Court the decisions of domestic courts declining his applications for release were manifestly arbitrary. Moreover, the notion of the serious danger to society caused by the offences is so abstract that it cannot justify detention in an individual case.

Furthermore, the applicant agrees with the Government's view that his case was complex. However, he points out that complexity can justify a delay in trial but not in release from pre-trial detention. In conclusion, the applicant submits that a very long period of his detention on remand is unacceptable and does not satisfy the requirements of Article 5 § 3 of the Convention.

The Court considers, in the light of the parties' submissions, that this complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court concludes, therefore, that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

3. The applicant further complains under Article 5 § 4 of the Convention that he was never brought before a court in the proceedings concerning judicial review of his detention. Article 5 § 4 provides:

> "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 Government accept that the Code of Criminal Procedure at the material time did not provide for the participation of either the applicant or his counsel in sessions of the Szczecin Regional Court and Poznań Court of Appeal at which the question of his release from pre-trial detention was decided. However, they are of the view that the applicant repeatedly challenged the lawfulness of his detention and all his arguments submitted in support of his release were examined by domestic courts "in a fully adversarial manner".

With respect to the role of the prosecutor in Polish criminal procedure, the Government contend that it is not restricted merely to prosecution but also extends to taking actions in favour of an accused if the principle of the objective truth so requires. The prosecutor should therefore be considered as the guardian of the public interest. In conclusion, the Government submit that the applicant's complaint is manifestly ill-founded.

The applicant claims that Article 88 of the Code of Criminal Procedure violated the principle of the equality of arms and resulted in the breach of Article 5 § 4 of the Convention in his case.

The Court considers, in the light of the parties' submissions, that this complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court concludes, therefore, that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

4. The applicant complained that the criminal proceedings against him exceeded a reasonable time in breach of Article 6 § 1 of the Convention, which provides in so far as relevant:

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

The Government submit that the length of the criminal proceedings did not exceed a reasonable time. They observe that the case was complex. In addition, the applicant contributed to the delay by filing with domestic courts numerous requests concerning the proceedings.

In her observations submitted on 25 August 1999 the applicant's counsel agreed with the Government's view that the length of the criminal proceedings did not exceed a reasonable time. She considered that the delay in deciding the case was caused by the complexity of the case and not the behaviour of the applicant.

The Court notes that it is common ground that the criminal proceedings against the applicant did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention. Having regard to the circumstances of the instant case it sees no reason to hold otherwise. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

5. The applicant further complains under Article 13 of the Convention that all his remedies in respect of his detention on remand proved ineffective as all courts dismissed his requests for release. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court recalls that the remedy within the meaning of Article 13 does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see K. v. the United Kingdom, Dec. 15.10.1986, D.R. 50, p. 199). It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaints that the length of his detention on remand violated Article 5 § 3 and that he was never brought before a court in the proceedings concerning judicial review of his detention in breach of Article 5 § 4;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Georg Ress
President