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

FOURTH SECTION

CASE OF IWAŃCZUK v. POLAND

(*Application no. 25196/94*)

JUDGMENT

STRASBOURG

15 November 2001

FINAL

15/02/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Iwańczuk v. Poland,

The European Court of Human Rights (Fourth Section), sitting 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,
Mrs N. VAJIĆ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 23 October 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25196/94) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Polish national, Mr Krzysztof Iwańczuk ("the applicant"), on 26 April 1994.

2. The applicant was represented by Mr Jacek Brydak, a lawyer practising in Warsaw, Poland. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki.

3. The applicant alleged that during the incident of 19 September 1993 he was subjected to humiliating treatment by the prison guards; that the courts did not act with expediency in the proceedings in which the conditions of the bail were determined and, consequently, his detention after the decision of 21 December 1993 to release him was arbitrarily prolonged, and that the criminal proceedings in his case exceeded a reasonable time.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 9 November 2000 the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Krzysztof Iwańczuk, is a Polish national, who was born in 1962. He lives in Brzeg, Poland.

9. On 12 September 1991 the Wrocław-Krzyki District Prosecutor charged the applicant with forgery of various documents and use of counterfeit documents. On 14 May 1992 the Wrocław-Krzyki District Prosecutor issued a warrant of arrest against the applicant on suspicion of theft. On 22 May 1992 the Wrocław Regional Court dismissed the applicant's appeal against the warrant of arrest.

10. On 24 July 1992 the Wrocław Regional Court decided to prolong the applicant's detention until 15 November 1992. On 21 August 1992 the Wrocław Court of Appeal dismissed the applicant's appeal against this decision.

11. On 12 September 1992 the Prosecutor charged the applicant with fraud. On 6 November 1992 the Wrocław Regional Court prolonged the applicant's detention until 31 December 1992. On 18 December 1992 the Wrocław Regional Prosecutor changed the charges laid against the applicant into misappropriation. On 23 December 1992 the Wrocław Regional Court prolonged the applicant's detention until 28 February 1993.

12. On 23 February 1993 the Wrocław Regional Court prolonged the applicant's detention until 15 April 1993. On 18 March 1993 the Wrocław Court of Appeal dismissed the applicant's appeal against this decision.

13. On 8 April 1993 the bill of indictment against the applicant was submitted to the Wrocław Regional Court. On 30 April 1993 that court prolonged the applicant's detention for another three months. On 12 May 1993 the applicant appealed against that decision, and on 25 May 1993 completed his appeal by a request to be present at the court's hearing concerning a further prolongation of his detention.

14. On 1 July 1993 the applicant requested the court to fix the date for a first hearing. On the same day the Wrocław Court of Appeal dismissed the applicant's appeal against the prolongation of detention of 30 April 1993.

15. On 19 September 1993 at 9.30 p.m the applicant requested the prison authorities to allow him to vote in the parliamentary elections, as there were voting facilities for detainees in the Wrocław prison. The prison guard took him to the guards' room. The applicant was then told by a group of four guards that in order to be allowed to vote he must get undressed and undergo a body search. The applicant took off his clothes except his underwear, whereupon the prison guards allegedly ridiculed him, exchanged humiliating remarks about his body and abused him verbally. The applicant was ordered to strip naked. He refused to do so and repeatedly requested

permission to vote without a body search. As this was refused, the applicant was taken back to his cell without being allowed to vote.

16. A group of other prisoners who requested permission to go to the voting room at approximately 9 p.m. on that day, were also ordered to undergo the body search.

17. On 20 and 22 September 1993 the first hearing on the merits was held before the Wrocław Regional Court.

18. On 23 September 1993 the applicant brought an action before the Supreme Court, complaining that his right to vote had been breached in that he had been prevented from voting. He submitted that the requirement to undergo a body search was unjustified as there had not been any indications in his behaviour during the entire period of his detention that he might threaten the safety of other voting prisoners or guards. He complained of humiliation by the prison guards by vulgar comments and verbal abuse in the course of the events complained of. He submitted that there were about ten further guards present in the voting room. It was untenable to claim that he could present any danger to anyone when taken thereto, in particular as it had been ascertained that he could not have had any arms on him.

19. On 27 October 1993 the Supreme Court dismissed the applicant's action. The court referred to a note concerning a conversation between the principal prison guard on duty on the material date and the president of the election committee in the prison, relating to the events. This note had been prepared upon a request of the Wrocław Regional Court, following the relevant enquiry of the Supreme Court for assistance in establishing the facts of the case. The Supreme Court noted that, according to the note, the prison guards had stated that the applicant could have a razor hidden on him and threaten the members of the election committee therewith. The court considered that the prison guards had been acting in conformity with the Rules of Detention on Remand of 1989, which provided that "if such a need arose, a detainee should undergo a search" and with the 1974 unpublished Ordinance on Prison Security, concerning, *inter alia*, body search of detainees. It was not certain, noted the court, whether at the material time this regulation had still remained in force, but it could not be held against the guards that they had acted according thereto. Thus it could not be established that on the part of the guards there had been intent to commit an offence, or to abuse their position. The Supreme Court concluded that the events complained of did not violate the applicant's voting rights.

20. On 21 December 1993 the Wrocław Regional Court decided to release the applicant on bail of 2,000,000,000 (old) zlotys. Upon the applicant's appeal, the Wrocław Court of Appeal upheld that decision on 5 January 1994, considering that there was no impediment to the bail being deposited in bonds or as a mortgage.

21. On 18 January 1994 the Wrocław Regional Court reduced the bail to 1,500,000,000 (old) zlotys. On 28 January 1994 the applicant requested that

bail be accepted in the form of a mortgage on his property, and enclosed an estimate of his property made by an expert and an extract from the land register to the effect that he was the owner of the property concerned.

22. On 17 February 1994 the applicant complained that the Regional Court had failed to take any steps toward implementing its decision of 18 January 1994. He submitted that his detention after this date was unlawful, given that it should have been replaced by bail. He pointed out that he had submitted relevant documents relating to his property.

23. On 23 February 1994 the Wrocław Regional Court ordered that the bail must be deposited in cash or in State obligations. On 7 March 1994 the Wrocław Regional Court upheld this decision. On 31 April 1994 the Wrocław Court of Appeal quashed the decision relating to the sum of bail. On 19 April 1994 the Wrocław Regional Court lowered the sum of bail to 100,000,000 (old) zlotys in cash and mortgage of 750,000,000 (old) zlotys. On 5 May 1994 the applicant was released.

24. Hearings fixed for 30 May 1994, 28 July, 15 September, 1 December 1994 and 22 February 1995 were adjourned for unknown reasons. On 15 and 16 March 1995 the accused were heard by the court.

25. Subsequently, hearings fixed for 6 April, 16 May, 29 June, 7 September and 25 October 1995 were adjourned, also for unknown reasons. Next hearing was held on 14 November 1995 when the court completed the questioning of the accused. Next hearing, fixed for 5 December 1995, was also adjourned. On 16 and 17 January 1996 a hearing was held and certain witnesses were questioned. Hearing fixed for 2 February 1995 was adjourned. At the hearings on 22 February and 13 March 1996 the court questioned further witnesses. Subsequently, further hearings scheduled for 26 March, 11 and 25 April 1996 were adjourned. At the hearing on 20 May 1996 further witnesses were heard. The hearing fixed for 16 July 1996 was adjourned.

26. At the hearings held on 20 September, 24 October and 7 November 1996 further witnesses gave evidence. Hearings scheduled for 28 November, 19 December 1996, 30 January and 20 February 1997 were adjourned. On 13 March 1997 the court took evidence from further witnesses. Hearing fixed for 3 April 1997 was adjourned.

27. In 1997 hearings were held on the following dates: 24 April, 15 May, 4 and 19 June, 15 July, 2 September.

28. In 1998 hearings were held on 17 March, 7 April, 6 May, 10 June, 3 September, 27 October, 24 November and 22 December.

29. The next hearing was held on 12 January 1999.

30. During the hearings held in 1997 and 1998 the court heard eleven witnesses.

31. On 17 November 1999, at the 71st hearing held during the proceedings, the composition of the court changed, and, consequently, hearings in the case had to be recommenced. On 22 December 1999 and

16 February 2000 the court read out the bill of indictment. The date of the next hearing was fixed for 20 March 2000. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW

A. Provisions pertaining to body search of detained persons

32. Pursuant to Section 11 of Rules of Detention on Remand of 1989, in force at the material time, body search of detained persons could be ordered at any time if such a need arose. Their clothes, underwear and shoes, as well as their cells, could be searched. This provision allowed for body search in particular when detainees left their cell and upon their return thereto, in particular during the night.

33. This issue was further governed by provisions of the unpublished Ordinance of the Minister of Justice of 6 March 1974 on Prison Security which provided in its Section 59 that detainees were subject to body search when they left their ward and upon their return. The body search was to be carried out in a separate room. A detainee undergoing the search should undress, their clothes, underwear and shoes should be carefully checked.

B. Preventive measures in criminal proceedings

34. At the relevant time, the authorities competent to decide on detention on remand were set by Articles 210 and 212 of the Code of Criminal Procedure of 1969, which read as follows:

Article 210:

"1. Preventive measures [i.e. detention on remand, bail and police supervision] shall be imposed by the court; before a bill of indictment is lodged with the court, they shall be ordered by the prosecutor (...)."

35. Article 212:

"1. A decision concerning preventive measures may be appealed [to a higher court] ...

2. A prosecutor's order on detention on remand may be appealed to the court competent to deal with the merits of the case...."

36. Article 225 of the Code of Criminal Procedure provided that detention on remand should be imposed only when it was mandatory; this measure should not be imposed if bail or police supervision, or both of these measures, were considered adequate.

37. Pursuant to Article 226 of the Code, bail, in form of cash, securities or mortgage, could be deposited by the accused, or by another person.

Determination of the sum, form and all relevant modalities of the bail should be made, regard being had to the financial situation of the accused and, as the case may be, another person depositing bail, as well as to the assessed damage which could have been caused by the offence concerned and to the character of the offence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complains about degrading treatment by prison guards during the incident, which took place on 19 September 1993 and which, in the applicant's submission, was in breach of Article 3 of the Convention which reads:

> "No one shall be subjected to ... degrading treatment..."

A. Arguments of the parties

1. The Government

39. The Government first submitted that, in the circumstances of the case, the measures taken against the applicant had been lawful. They submitted that the prison guards had been acting with the purpose of guaranteeing security for the election officers. They referred to Section 11 of the Rules of Detention on Remand of 1989, which, if such a need had arisen, allowed ordering body search of a detained person. It also provided for body searches on each occasion when a detained person left the cell and upon his or her return thereto, in particular during the night. They further referred to Section 59 of the Minister of Justice's Ordinance on Prison Security of 1974.

40. The Government argued that the order to strip naked had been justified. Given that necessary arrangements had been made in order for the prisoners to vote in prison, the prison guards had been obliged to take safety measures, provided for by the Rules of Detention on Remand and by the Minister of Justice's Ordinance on Prison Security of 1974. Even assuming that this Ordinance had *de facto* ceased to be in force, as implied by the Supreme Court's decision of 27 October 1993, the order to strip naked was lawful as the Rules of Detention on Remand of 1989 expressly provided that such a measure could be made in respect of a person detained on remand.

41. The Government acknowledged that body search had not been a regular precondition for a detainee to be allowed to vote in parliamentary elections. However, considering that for casting a vote it had been necessary to leave the cell, body search could be applied under the aforementioned rules.

42. The Government further contended that there had been special reasons to order the body search of the applicant, namely the late hour at which he had requested to be allowed to vote. The applicant should have been aware of this requirement, given that he had requested to be allowed to vote late in the evening. They further refer to the fact that on an unspecified date certain prohibited belongings, including a knife, had been found in his cell. The suspicions as to the potential danger which the applicant might have represented were strengthened by the fact that the applicant refused to undress when ordered to do so.

43. The Government argued that in the internal enquiry held following the applicant's complaint to the Supreme Court about the alleged breach of his voting rights, the complaints as to the verbal insults of the prison guards proved untrue as the prison guards denied the applicant's allegations. The Government emphasised that the Supreme Court in its decision of 27 October 1993, had carefully assessed the circumstances of the case and found no breach of the applicant's voting rights. The Government concluded that there had been no violation of Article 3 of the Convention.

2. The applicant

44. The applicant reaffirmed that the prison guards had first ordered him to strip naked and then verbally insulted and ridiculed him.

45. He acknowledged that at the material time the 1989 Rules of Detention on Remand had been applicable to the applicant's situation as a detainee. However, the 1974 Ordinance on Prison Security, on which the Government relied, could not be validly invoked as a legal basis for the guards' actions. He referred in particular to the Supreme Court's statement in its decision of 27 October 1993 that "it was not certain whether at the material time this regulation was still in force". He emphasised that this Ordinance had never been properly published and therefore could not be considered "law" as it was not accessible. He further submitted that, pursuant to the principle *lex posterior derogat legi priori*, this Ordinance had *de facto* been abrogated by the entry into force of the 1989 Rules which governed the same subject. It was also stressed that it was for the State to ensure that its agents, including prison guards, were aware of and apply legal provisions, which were indeed in force. The applicant emphasised that he had been ordered to strip naked in presence of several prison guards on the basis of a regulation, which had not been valid.

46. The applicant stressed that the Government's argument did not provide a sufficient basis for finding that body search had been ordered in

respect of every and each occasion when a detainee left his cell or returned to it, even during the night. Contrary to the Government's submissions, under Section 11 of the Rules of Detention, body search could be ordered "if a need arose", but clearly not automatically if an inmate left the cell during the night, or during the elections organised in prison. This Section had provided for search of inmate's clothes, underwear, shoes and his cell, but not for the search of his body. Normally in prisons metal detectors were in use, and if the prison guards had justified grounds on which to order the applicant's body search, they could have ordered that such detector be used. Moreover, after the applicant refused to strip naked, he had been allowed to return to his cell. In the applicant's argument, a question arose why the guards had allowed him to return if they had, as the Government contended, serious grounds for a suspicion that he was carrying dangerous devices on him. This discrepancy also indicated that the order to strip naked had been meant as an abuse and had not been dictated by any justified fears.

47. The applicant emphasised that the Supreme Court had not assessed the conduct of the prison guards in a manner that would be of relevance to the legal issue now before the Court. In particular, the Supreme Court had not examined whether the prison guards verbally insulted and derided the applicant. The Supreme Court had only recognised that the treatment complained of did not amount to a breach of the applicant's election rights.

48. Thus the humiliating treatment complained of lacked any legal basis and, first and foremost, was not justified by the applicant's behaviour. It must therefore be deemed to constitute an abuse, which amounted to a breach of Article 3 of the Convention.

B. The Court's assessment

49. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (*Labita v. Italy* [GC], no. 26772/95, 6.4.2000, § 119, ECHR 2000-IV).

50. The Court further 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 (Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162). The same holds true insofar as degrading treatment is concerned (Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30). As for the criteria concerning the notion of "degrading treatment", the Court notes that the treatment itself will not be degrading, unless the person concerned has undergone humiliation or debasement attaining a minimum level of severity. The assessment of this minimum level of severity is

relative; it has to be assessed with regard to the circumstances of any given case (cf., among many authorities, Ireland v. the United Kingdom judgment; the *Dougoz v. Greece*, no. 40907/98, § 44).

51. It is also recalled that treatment may be considered degrading if it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167). Moreover, it is sufficient if the victim is humiliated in his or her own eyes (see the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 16, § 32, *Smith and Grady . the United Kingdom*, nos. 33985/96 ; 33986/96, § 120).

52. Furthermore, in considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (*Peers v. Greece*, no. 28524/95, §§ 67-68, 74; *Valašinas v. Lithuania*, no.44558/98, § 101).

53. The Court stresses that a person detained on remand, and whose criminal responsibility has not been established by a final judicial decision, enjoys a presumption of innocence. This assumption does not apply only to his or her procedural rights in the criminal proceedings, but also to the legal regime governing the rights of such persons in detention centres, including the manner in which a detainee should be treated by prison guards. It must be further emphasised that the authorities exercise full control over a person held in custody and their way of treating a detainee must, in view of his or her vulnerability, be subjected to strict scrutiny under the Convention (cf., *mutatis mutandis*, the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 113-115).

54. In the present case the applicant wished to avail himself of his basic right, the right to vote in parliamentary elections, in the election room arranged for that purpose within the confines of the prison. The Court considers that it is doubtful whether the exercise of this right by persons detained on remand should be subject to any special conditions other than those dictated by normal requirements of prison security. In any event, the Court does not find, on the facts of the case, that it was justified that such conditions should include an order to strip naked in front of a group of prison guards.

55. The Court first notes in this connection that in their submissions the Government have confined themselves to pointing out to the lawfulness of the measures complained of. However, they have not addressed the question of how the relevant provisions of domestic law were applied in practice at the material time in the context of voting in parliamentary elections organised in prisons and detention centres. In particular, it has not been

argued or shown that this measure was applied uniformly to all detainees in the Wrocław detention centre on the material day so as to ensure security of the elections.

56. The Court further considers that, given the applicant's personality, his peaceful behaviour during the entire period of his detention, the fact that he was not charged with a violent crime and had no previous criminal record, it has not been shown that there were grounds on which to fear that he would behave violently. Consequently, it has not been shown that the order of body search was indeed justified.

57. Also, in the assessment of the treatment complained of, regard must be had to the intentions of the persons inflicting it, namely whether they acted with a deliberate intention to degrade or humiliate. It is noted in this connection that the applicant was insulted and derided by four prison guards. The submissions of the Government in this respect do not allow for establishing that these submissions are untrue. This is so as no internal administrative enquiry of an adversarial character was held into the circumstances of the case. The only factual findings were made in the framework of the applicant's complaint to the Supreme Court. The Court requested the local Regional Court to conduct investigations in this respect. The Regional Court subsequently requested the prison authorities to submit written declarations of the persons involved in the case and the Supreme Court made its findings on the basis of a note prepared on the basis of testimony given by the prison guards. The applicant was not questioned in the course of that enquiry, nor had it been shown that he had any opportunity to be acquainted with this testimony, or to comment on the statement of the guards. This, in the Court's view, shows the reluctance on the part of the authorities to investigate the incident properly. Consequently, the Court cannot attach much weight to the Government's arguments refuting the applicant's allegations.

58. Against the above background, the Court observes that the applicant was ordered to strip naked in front of a group of prison guards. No compelling reasons have been adduced to find that this order was, in the light of the applicant's personality and all the other circumstances of the case, necessary and justified by security reasons.

59. In addition, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder in prisons, they must be conducted in an appropriate manner. In the present case, the prison's guards verbally abused and derided the applicant. Their behaviour was intended to cause in the applicant feelings of humiliation and inferiority. This, in the Court's view, showed a lack of respect for the applicant's human dignity. Given that such treatment was afforded to a person who, as stated above, wished to exercise his right to vote within the framework of arrangements specially provided for in Wrocław prison for persons detained on remand, and in view of the absence of persuasive justification therefor, the Court is

of the view that in the present case such behaviour which humiliated and debased the applicant, amounted to degrading treatment contrary to Article 3.

60. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

61. The applicant complained that the courts did not act with expediency in the proceedings in which the conditions of the bail were determined and, consequently, his detention after the decision of 21 December 1993 to release him was arbitrarily prolonged. The applicant submitted that this amounted to a breach of Article 5 § 3 of the Convention, which reads:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Arguments of the parties

1. The Government

62. The Government submitted that the applicant's detention on remand satisfied the relevant substantive requirements under domestic law. The decisions on his detention were aimed at safeguarding proper conduct of the criminal proceedings. The evidence gathered in the course of the proceedings justified suspicion that he had committed the offences concerned. The courts in their decisions examined the complaint about the alleged length of the proceedings, acting *ex officio* and also upon the applicant's complaints raised in his appeals against the decisions to prolong the detention. The courts carefully considered the following factors: the character and seriousness of the offences concerned, a possibility of collusion as the applicant had tried, even when detained, to exert pressure on witnesses, and the fact that the suspicion against him was well-founded and supported by the evidence. Moreover, as the case was very complex, a great number of factual circumstances had to be established by the prosecuting authorities.

63. In conclusion, the Government stated that the applicant's detention of one year and four days from 1 May 1993, the date on which Poland recognised the competence of the Court to examine individual application against it, to 5 May 1994, had not exceeded a reasonable time and that it was in accordance with Article 5 § 3 of the Convention.

2. The applicant

64. The applicant submits that the arbitrariness of his detention was shown by the fact that other suspects in the same case were not detained at all or were released on bail after a few months. He further refers to bail conditions set for them by the prosecuting authorities, which involved sums ten times lower than that proposed by the applicant. The applicant further submits that the proceedings before the Regional Court concerning the bail cannot be considered as lawful. The court decided to release him on bail of 2,000,000,000 (old) zlotys and on condition of police surveillance. The amount of the bail was forty times higher than that decided in relation to the other accused and was not in any reasonable relation to the applicant's financial situation, regard being had in particular to the fact that on 2 December 1993 he had been declared bankrupt. Despite the fact that the decision concerning the bail was subsequently changed and the amount of bail reduced, the applicant remained in detention until 5 May 1994 as the Regional Court breached Article 226 of the Code of Criminal Procedure and ordered that the bail should be deposited in cash.

65. The applicant concludes that his detention was arbitrarily imposed and prolonged after the Regional Court, by way of the decision of 21 December 1993, decided to release him on bail.

B. The Court's assessment

66. The Court recalls that according to its case-law, the amount of the bail must be "assessed principally in relation to the person concerned, his assets ... in other words to the degree of confidence that is possible that the prospect of loss of security.. in the event of his non-appearance at a trial will act as a sufficient deterrent to dispel any wish on his part to abscond" (see the Neumeister v. Austria judgment of 27 June 1968, Series A, p. 40 § 14). The accused whom the judicial authorities declare themselves prepared to release on bail must faithfully furnish sufficient information, that can be checked if need be, about the amount of bail to be fixed. As the fundamental right to liberty as guaranteed by Article 5 of the Convention is at stake, the authorities must take as much care in fixing appropriate bail as in deciding whether or not the accused's continued detention is indispensable (European Commission HR, no. 8339/78, Rap. 11.12.80, DR 23, p. 137).

67. In the present case, the Court observes that the Wrocław Regional Court decided to release the applicant on bail on 21 December 1993. The amount of bail thus fixed was 2,000,000,000 (old) zlotys. The Court of Appeal subsequently upheld the amount of bail, finding that there was no impediment to the bail being deposited in bonds or as a mortgage on the applicant's real estate. On 18 January 1994 the Regional Court reduced the bail to 1,500,000,000 (old) zlotys. The applicant further requested that the

bail be accepted in the form of mortgage, and enclosed an expert estimate of his property. Several other decisions ensued, in which the sum of bail and its form were changed. Finally in April the bail of 100,000,000 (old) zlotys to be paid in cash and 750 million in mortgage was accepted. The applicant was released on 5 May 1994, after the bail was duly deposited, i.e. four months and fourteen days after the decision to release him was taken.

68. The Court observes that the authorities found already in December 1993, as shown by the decision of the Wrocław Regional Court of 21 December 1993, that the applicant's release as such would not jeopardise the further course of the proceedings. However, the applicant was released only in May 1994 as during that period the decisions as to the sum and form of the bail were changed several times.

69. The Court notes that the applicant promptly complied with his obligation to provide relevant information as to his assets. It was only the assessment of the actual sum of the bail to be deposited, that the courts kept changing. The main difficulty, however, consisted in determining the form of the bail, i.e. whether it should be deposited in cash, in State bonds or by way of mortgage on the applicant's real property. Regard must be had to the fact that the authorities at a certain point refused that the bail be deposited in the form of mortgage, without questioning the applicant's title to the property concerned. This, in the Court's view, implies that the authorities were reticent to accept the bail, which, in case of the applicant's non-appearance for the trial, would require undertaking certain formalities in order to seize the assets. This in itself, in the Court's opinion, cannot be regarded as sufficient ground on which to maintain for four months the detention on remand which had already been deemed unnecessary by the decision of the competent judicial authority.

70. In view of the fact that the proceedings relating to the amount and the modalities of payment of the bail, lasted as long as four months and fourteen days, whereas the applicant remained in detention throughout this period, after the decision was taken that his further detention was unnecessary, and that no adequate reasons were forwarded by the authorities to justify successive changes of decisions concerning the form in which bail was to be deposited, the Court finds that there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

71. The applicant complains about the length of the criminal proceedings, relying on Article 6 § 1 of the Convention which, insofar as relevant, provides:

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

A. Period to be taken into consideration

72. The Court recalls that Poland recognised the competence of the European Commission of Human Rights to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". According to Article 6 of Protocol No. 11 to the Convention, this limitation remains valid for the jurisdiction of the Court under that Protocol. It follows that the period which must be examined under Article 6 § 1 of the Convention began to run not on 12 September 1991, the date on which the applicant was charged with criminal offence, but on 1 May 1993, when Poland's declaration recognising the right of individual petition for the purposes of former Article 25 became effective. The proceedings are still pending. The period to be considered is therefore of approximately eight years and a half.

B. Applicable criteria

73. As to the reasonableness of the length of the proceedings, the Court recalls that it must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, and the Philis v. Greece (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

C. Arguments of the parties

1. The Government

74. The Government submitted that the proceedings in review of the applicant's detention on remand had been conducted within the time-limits provided for by law. They further contended that the case should be regarded as very complex, given that the applicant had been charged with three counts of a large-scale fraud, that there had been ten accused in the case, that one hundred and twenty-five witnesses had to be heard and that evidence had to taken from seven experts. There had been no delays in the conduct of the proceedings other than those caused by objective circumstances. The applicant had contributed to the prolongation of the proceedings. On the whole, the length of the proceedings after 30 April 1993 was reasonable.

2. The applicant

75. The applicant contested this and submitted that the overall length of the proceedings exceeded a reasonable time.

D. The Court's assessment

76. The Court accepts that the proceedings were of a certain complexity, having regard to the scope of the criminal case.

77. As regards the conduct of the applicant, the Court considers that it has not been shown that he contributed to the length of the proceedings.

78. As to the conduct of the authorities, the Court notes that on 17 November 1999 the composition of the Court was changed and that, consequently, the hearings had to be recommenced, after 71 hearings, which had already been held in the case.

79. Having regard to all the evidence before it the Court finds that the overall duration of the proceedings concerning the applicant's case (see § 69) cannot be regarded as reasonable, despite the inherent complexity of such proceedings.. Accordingly, the Court finds that there been a violation of Article 6 §1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

81. The applicant claimed damages for pecuniary and non-pecuniary damage in the amount of USD 20,000.

82. The Government submitted that the applicant's claim was exorbitant and requested the Court to rule that the finding of a violation would constitute sufficient just satisfaction.

83. Having regard to its case-law (see *Kudła v. Poland* [G.C.], no. 30210/96), and ruling on an equitable basis, the Court awards the global sum of 30,000 (new) zlotys (PLN) under the head of non-pecuniary damage in respect of the violations of the Convention found in the present case.

B. Costs and expenses

84. The applicant sought reimbursement of costs and expenses he had paid in a sum of USD 4,100, out of which USD 3,600 in legal fees and USD 500 in costs incurred in the domestic proceedings and in the proceedings before the Convention organs.

85. The Government objected thereto.

86. The Court recalls that, according to the criteria laid down in its case-law, it must ascertain whether the sum claimed was actually and necessarily incurred and was reasonable as to quantum (cf. *Brumarescu v. Romania* (just satisfaction) [GC], no. 28342/95, 23.1.2001, § 30). Applying the said criteria to the instant case, and making its assessment on an equitable basis, the Court finds it reasonable to award the applicant an amount of PLN 14,400 for his costs and expenses together with any value-added tax that may be chargeable.

C. Default interest

87. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 30 % per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention;

2. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) 30,000 (thirty thousand) Polish zloty in respect of non-pecuniary damage,

(ii) 14,400 (fourteen thousand four hundred) Polish zloty for costs and expenses, together with any value-added tax that may be chargeable;

(b) that simple interest at an annual rate of 30 % shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 15 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President