CASE OF HUMEN v. POLAND

(Application no. 26614/95)

JUDGMENT

STRASBOURG

15 October 1999

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of Humen v. Poland,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr C. ROZAKIS, *President*,
Mrs E. PALM,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr B. CONFORTI,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOUCHAROVA,
and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 9 June 1999 and on 22 September 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the Polish Government ("the Government") on 22 September 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 26614/95) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 by Mr Edward Humen, a Polish national ("the applicant"), on 7 April 1994.

The Government's application to the Court referred to former Article 48. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

2. The applicant failed to respond to the enquiry made in accordance with Rule 35 § 3 (d) of former Rules of Court B[4] as to whether he wished to appoint a representative.

3. As the President-elect of the new Court, Mr L. Wildhaber, acting through the Registrar, consulted Mr K. Drzewicki, the Agent of the Government, the applicant and Mr M.A. Nowicki, the Delegate of the Commission, on the organisation of the written procedure (former Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 1 March 1999, after an extension of the time-limit fixed for that purpose. The applicant failed to submit his memorial. The Delegate of the Commission did not avail himself of his right to file a memorial in reply to the parties' pleadings.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio*

Mr J. Makarczyk, the judge elected in respect of the Republic of Poland (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr. L. Wildhaber, the President of the Court, Mrs E. Palm and Mr C. Rozakis, Vice-Presidents of the Court, and Sir Nicolas Bratza and Mr M. Pellonpää, Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 § 3). The other members appointed to complete the Grand Chamber were Mr B. Conforti, Mr G. Bonello, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr M. Fischbach, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4).

Subsequently, as Mr L. Wildhaber was unable to take part in the further consideration of the case, his place as President of the Grand Chamber was taken by Mr C. Rozakis and Mr A. Baka, substitute judge, replaced him as a member of the Grand Chamber (Rules 10 and 24 § 5 (b)).

5. After consulting the applicant and the Agent of the Government, the Grand Chamber decided that it was not necessary to hold a hearing.

6. On 18 March 1999 the President of the Grand Chamber directed, under Rule 36 § 2, that the applicant should be represented by a lawyer in accordance with paragraph 4 of that Rule. The President further decided, under Rule 38, that the applicant should submit a written reply to the Government's memorial by 30 April 1999.

7. On 26 April 1999 the applicant designated Mrs Romana Orlikowska- Wrońska, of the Gdańsk Bar, as the lawyer who would represent him (Rule 36 § 4 (a)). Subsequently, the President of the Grand Chamber decided to allow the applicant's request for the grant of legal aid for his representation by this lawyer (Rule 91).

8. On 30 April 1999 the representative of the applicant submitted a reply to the Government's memorial. Copies thereof were transmitted to the Government and the Commission's Delegate on 6 May 1999.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 3 May 1982 the applicant was arrested by the militia because he had taken part in a street demonstration in Gdańsk. Subsequently, he was detained on remand on suspicion of having participated in an illegal assembly. On 5 January 1983 the Gdańsk Regional Court (*Sąd Wojewódzki*) convicted the applicant of participating in an illegal assembly constituting a violent attack against third persons and public property (an offence outlawed by section 275 § 1 of the Criminal Code of 1969) and sentenced him, under martial law as then in force, to sixteen months' imprisonment. The court of first instance found, *inter alia*, that the applicant, while participating in the demonstration (commemorating the anniversary of the Constitution of 3 May 1791) had shouted anti-government slogans and hurled insults at the militia officers; had unfurled the national flag on a monument; and, when the militia forces had attempted to put down the demonstration, had thrown stones at them from the street barricades, thus destroying public property (i.e. militia vans and park benches). On 8 June 1983 the Supreme Court (*Sąd Najwyższy*) upheld the first-instance judgment.

10. On 3 March 1993 a panel of seven judges, sitting as the Criminal Chamber of the Supreme Court, on an extraordinary appeal filed by the Prosecutor General (*Prokurator Generalny*), quashed both the above-mentioned judgments and acquitted the applicant, finding that he had not committed any offence but had merely exercised his fundamental civil liberties as "he had taken part in a peaceful and patriotic demonstration". On this last point, the Supreme Court stressed that there was no doubt that the demonstration, regardless of whether it had been "legal" or "illegal" under the law as then in force, had not been intended to be a "violent attack against third persons or property". Moreover, the violent clash between the demonstrators and the militia forces had been a simple consequence of and an inevitable response to the brutal attack by the latter on the demonstrators with, *inter alia*, truncheons, tear-gas bombs and water-cannons.

11. On 13 April 1993 the applicant lodged a request based on section 487 of the Code of Criminal Procedure with the Gdańsk Regional Court. He sought compensation from the State Treasury for his wrongful conviction in 1983 and his unjustified detention which had lasted 249 days in all. He requested the court to award him an unspecified sum in damages for loss of earnings, injuries allegedly sustained by him in the course of his detention and damage to his health resulting from imprisonment. At the material time the applicant was detained in Kwidzyń Prison where he was serving a sentence imposed in other criminal proceedings.

12. On 21 May 1993 the Chief Justice of the Gdańsk Regional Court informed the applicant that the above request had been referred to Criminal Division IV of that court on 18 May 1993.

13. In a letter of 7 June 1993 the applicant requested the court to inform him of the progress of the proceedings.

14. On 15 June 1993 the Gdańsk Regional Court ordered the applicant to specify the amount of the

damages sought by him and to produce documents relating to the injuries sustained by him during his detention. The applicant specified the amount of the damages in a pleading filed with the court's registry on 25 June 1993.

15. On 19 July 1993 the applicant requested the court to deal with his request as soon as possible. On 30 July 1993 the court informed him that it was dealing with requests for compensation submitted in the first six months of 1992. The applicant's attention was drawn to the fact that he had failed to submit the documents requested on 15 June 1993. The applicant produced the documents in question on an unspecified date in September 1993 and requested the court to list a hearing.

16. On 10 August 1993 the applicant complained to the Ombudsman (*Rzecznik Praw Obywatelskich*), the Minister of Justice and the Gdańsk Court of Appeal (*Sąd Apelacyjny*) about the slow conduct of the proceedings in his case. On an unspecified date his complaints were referred to the Chief Justice of the Gdańsk Regional Court, who replied thereto on 6 November 1993. The Chief Justice informed the applicant that there were 28 similar compensation cases registered with the Criminal Division of that court and that the applicant's case was the twentieth on the list. As a consequence, it was difficult to foresee precisely when a hearing in his case would be held.

17. On 26 October 1993 the applicant complained to the Supreme Court about the length of the proceedings in his case. On 9 November 1993 his complaint was referred to the Gdańsk Court of Appeal which, on 23 December 1993, informed the applicant that his case was currently the sixteenth on the list and that it would probably be dealt with in the first three months of 1994.

18. In the meantime, on 10 November 1993, the applicant had submitted a pleading to the Gdańsk Regional Court, increasing his claims. In particular, he requested the court to order the State to pay him in addition a monthly amount to compensate him for loss of opportunities. He also informed the court that he was unable to produce any documents relating to the injuries sustained by him during detention since his medical records of 1982 were kept in the prison archives and they could be disclosed only upon the court's order. On 25 November 1993 the court ordered the competent prison authorities to produce the relevant documents; they were filed with the court on 7 December 1993. On the same day the applicant requested the court to list a hearing.

19. In a pleading filed with the court's registry on 29 December 1993 the applicant increased his claims to an unspecified sum.

20. On 5 January 1994 the Gdańsk Regional Court, in reply to a subsequent complaint from the applicant, informed him that it was still dealing with other requests for compensation submitted prior to his. The court stated, however, that a hearing in his case would be listed as soon as possible.

21. On 24 January 1994 the applicant again complained to the Gdańsk Regional Court about the excessive length of the proceedings. In a letter of 8 February 1994 the court informed him that it was not feasible to list a hearing for any date in the first three months of 1994.

22. On 14 February 1994 the applicant complained to the Chief Justice of the Gdańsk Regional Court about the length of the proceedings and asked him when the first hearing would be held. On 23 March 1994 the Chief Justice informed the applicant that his case would probably be dealt with in June or July 1994. He also admitted that, on account of substantial delays in dealing with similar requests for compensation, previous indications as to a possible hearing date appeared to have been inaccurate.

23. On 28 March 1994 the applicant complained to the Minister of Justice about inactivity on the part of the Gdańsk Regional Court.

24. On 1 June 1994 the Gdańsk Regional Court listed the first hearing in the applicant's case for 17 June 1994. During the hearing the court took evidence from the applicant who stated, *inter alia*, that in 1982 he had conducted a business activity and had been a member of the Gdańsk Trade Guild. The court adjourned the trial *sine die* since it found that evidence needed to be obtained from medical experts in order to assess whether there was a causal link between the state of the applicant's health and the detention imposed in 1982-83. The court also considered it necessary to hear evidence from the applicant's sister and to call for documentary evidence of financial loss (if any) sustained by the applicant as a result of his conviction and the deprivation of his liberty.

25. On 20 June 1994 the court ordered that the following documentary evidence be obtained: firstly, the

applicant's updated medical records from the relevant prison authorities; secondly, written information from the competent tax office as to whether the applicant had paid any tax on his income for April and May 1982; thirdly, a certificate from the applicant's former employer stating the applicant's average monthly salary over the period preceding his detention (i.e. from 29 October 1981 to 31 March 1982) and, fourthly, written information from the Gdańsk Trade Guild on whether the applicant had been a member of the guild and had paid membership fees.

26. On 27 June 1994 the court received the applicant's medical records. On 21 July 1994 the tax office informed the court that the applicant had not been registered as a taxpayer conducting business activities in 1982. Since the company by which the applicant had formerly been employed had failed to produce the certificate requested, the court issued two reminders to it, on 19 July and 1 September 1994. On 15 December 1994 the applicant's employer provided the court with the certificate in question.

27. Meanwhile, in a letter of 25 July 1994, the applicant had asked the trial court when the proceedings would be terminated. On 8 August 1994 the court informed him that procedural steps had been taken to obtain the evidence relevant for the determination of his claims.

28. On 3 and 24 October 1994 the applicant complained to the Chief Justice of the Gdańsk Regional Court about the length of the proceedings. On 25 October 1994 the Chief Justice informed the applicant that on 20 October 1994 the case-file had been sent to experts at the Faculty of Forensic Medicine of the Gdańsk Academy of Medicine. Therefore, the date of the next hearing could not be fixed until the experts had submitted their report.

29. On 18 November 1994 the court, after finding that the experts had not fixed a date for the applicant to be examined, ordered that the registry supervise the experts' work and report to the presiding judge on the progress of the process of obtaining evidence.

30. On 1 December 1994 the applicant was examined by a neurologist who expressed the opinion that he should also undergo a brain tomography examination. The Faculty of Radiology of the Gdańsk Academy of Medicine, at the court's request, fixed the date of the examination for 22 December 1994.

31. In the meantime, on 19 December 1994, the applicant had been granted twenty-four hours' leave from prison and had failed to return. He did not keep his appointment for the brain tomography examination.

32. On 13 January 1995 the Gdańsk Regional Court stayed the proceedings, after being informed by the prison authorities that the applicant was still being searched for. On 17 February 1995 the court resumed the proceedings as the applicant had informed it that service of a summons or other court documents on him could be effected at his home address. Subsequently the court requested the experts to fix another date for the brain tomography examination. The examination was to be carried out on 24 April 1995 and the court ordered that on that day the applicant, who had in the meantime been redetained, be taken from prison to the experts.

33. However, on 11 April 1995, the Chief Justice of the Gdańsk Regional Court informed the President of the Criminal Division of that court that the applicant, in his two letters dated 3 April 1995, had refused to consent to the brain tomography examination and had threatened to go on hunger strike in order to obtain a date for the next hearing.

34. On 4 May 1995 the trial court informed the experts that the applicant was unwilling to undergo the brain tomography examination and asked them whether they would be able to prepare their report on the basis of the materials contained in the case file. The experts submitted their report to the court on 23 May 1995.

35. On 23 May 1995 the court again requested the Gdańsk Trade Guild to submit information on whether the applicant had been a member of the guild in April and May 1982. On 25 May 1995 the court was informed, by telephone, that the applicant had not been a member of the guild from 1980 to 1995. Later, on 30 May 1995, the court established on the basis of unspecified evidence that the applicant, even though he had previously alleged that he had commenced his business activity in 1982, had in fact registered his business with the relevant authorities on 1 August 1990.

36. On 2 June 1995 the Gdańsk Regional Court held a hearing and heard evidence from the applicant's sister. During the hearing the applicant confirmed that he was unwilling to undergo the brain tomography examination. On the same day the court pronounced a decision granting the applicant's claims in part. It

awarded him the sum of 5,000 Polish zlotys (PLN), of which PLN 2,500 was for pecuniary damage and PLN 2,500 for non-pecuniary damage.

37. On 5 July 1995, on the applicant's appeal of 9 June 1995, the Gdańsk Court of Appeal quashed the first-instance decision and remitted the case to the Gdańsk Regional Court, finding, in particular, that the lower court had failed to establish properly a causal link between the state of the applicant's health and his detention. In the meantime, on 26 June 1995, the applicant had requested the court to terminate the proceedings as soon as possible.

38. On 17 July 1995 the Gdańsk Regional Court ordered that a fresh report be obtained from the neurologist who had prepared the previous report.

39. In his pleading of 19 July 1995 the applicant increased his claims to an unspecified sum.

40. On 17 August 1995 the applicant complained to the court that the length of the proceedings in his case was excessive. On 23 August 1995 the court informed him that the next hearing would be listed after obtaining the report from the expert.

41. On 28 August 1995 the expert informed the court that he was unable to prepare a more extensive report on the applicant's state of health without the help of the brain tomography examination.

42. In a letter of 12 September 1995, received at the court's registry on 25 September 1995, the applicant requested the court to proceed with his case.

43. On 11 October 1995 the court held a hearing and heard evidence from the expert. The trial was adjourned since the court decided that evidence should be heard from two witnesses, namely K.D., a doctor, and A.P., the prosecutor who had detained the applicant on remand in May 1982. Until 14 December 1995 the court was unable to establish the address of (and thus to serve a summons on) A.P.

44. On 12 January 1996 the court held the next hearing and heard evidence from K.D.; however, the trial was adjourned to 9 February 1996 since A.P. had failed to appear before the court. On 9 February 1996 the trial was again adjourned for the same reason. During a subsequent hearing, which was held on 6 March 1996 in the applicant's presence, the court heard evidence from A.P. and pronounced a decision granting the applicant compensation in the sum of PLN 6,800 for pecuniary and non-pecuniary damage. The full text of the decision was served on the applicant on 18 March 1996. Since he did not appeal against it within the statutory time-limit of seven days, the decision became final and enforceable on 26 March 1996. On 1 October 1996 the applicant went to the Financial Department of the Gdańsk Regional Court and received the sum awarded, in cash.

II. RELEVANT DOMESTIC LAW AND PRACTICE

45. At the material time the domestic provisions setting out the State's liability for wrongful conviction or for unjustifiably depriving an individual of his liberty in the course of criminal proceedings against him were contained in Chapter 50 of the Polish Code of Criminal Procedure of 1969, entitled "Compensation for unjustified conviction, detention on remand or arrest". The Code is no longer in force as it was repealed and replaced by the Code of Criminal Procedure of 6 June 1997, currently referred to as the "New Code of Criminal Procedure".

46. Section 487 of the Code of Criminal Procedure of 1969 provided, insofar as relevant:

"1. An accused who, as a result of the reopening of the criminal proceedings against him or of lodging an extraordinary 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."

47. Section 488 of that Code provided, insofar as relevant:

"1. A request for compensation shall be submitted to a regional court in whose jurisdiction the decision giving rise to the request for compensation was given at first instance. ...

2. The court shall consist of three judges. Cases relating to requests for compensation shall be given priority and no court fees shall be required from the applicant."

48. A request for compensation based on the foregoing provisions was examined by a criminal court. In those proceedings the court applied the rules of criminal procedure; however, in respect of such questions as the evaluation of the pecuniary or non-pecuniary damage sustained by an accused, the court applied the relevant principles set out in the Civil Code. The person concerned was entitled to compensation for any financial loss (e.g. loss of work or earnings), damage to health and psychological harm resulting from the execution of the sentence or detention on remand. In order to determine the amount of the damages due for loss of work or earnings the court was obliged to establish the earning capacity which the applicant would have had if he had not been convicted and detained and to deduct from the sum so determined his necessary everyday expenses and, if appropriate, other spending or losses (see the decision of the Supreme Court of 19 April 1995, no. WZ 71/95, published in *OSP 1995/12/235*).

49. The court primarily applied the rules of evidence contained in the Code of Criminal Procedure. However, according to well-established legal theory and practice, the court also applied the relevant rules of civil procedure. In particular, since the main issue involved in such proceedings was financial reparation for a miscarriage of justice, and not the determination of any criminal charge, the court applied a general principle of civil procedure that the burden of producing evidence and the burden of proof lay on the claimant.

50. In such matters as the admissibility and assessment of evidence the court essentially applied the relevant provisions of the Code of Criminal Procedure, providing, in particular, that the court could admit evidence either of its own motion or at the parties' request and assess it on the basis of its own conviction. However, in cases where it was impossible or difficult to establish with precision the facts relevant for the determination of the damages due for loss of work or earnings (such as the earning capacity of the applicant, his income and expenses), the court was required, applying by analogy section 322 of the Code of Civil Procedure, to fix the amount of such damages on the basis of its own assessment of all the relevant circumstances (see the resolution reached by the Plenary Supreme Court on 7 June 1958, no. Prez. 729/58, published in *OSN 1958,* no. 4, item 34)

51. Under Section 10 § 2 of the Code of Criminal Procedure organs conducting criminal proceedings were, if necessary, obliged to inform the parties to the proceedings of their procedural rights and duties.

PROCEEDINGS BEFORE THE COMMISSION

52. Mr Edward Humen applied to the Commission on 7 April 1994. He alleged firstly that the proceedings in the Gdańsk Regional Court, which concerned his claim for compensation for his wrongful conviction under martial law and his unjustified detention, had been unreasonably long. He further maintained that, in three separate sets of criminal proceedings against him, the Polish courts had convicted him on the basis of insufficient evidence and that they had incorrectly assessed the evidence presented before them. In respect of one of those three sets of criminal proceedings against him, the applicant also alleged that his right to be

released pending trial had not been respected. Lastly, the applicant complained about the fact that he had been refused a temporary suspension of his sentence. He did not invoke any specific provision of the Convention in support of his complaints.

53. The Commission examined the applicant's complaints under Article 6 § 1 and Article 5 § 3 of the Convention. On 3 December 1997 the Commission (Second Chamber) declared the application (no. 26614/95) admissible insofar as it concerned the complaint about the length of the proceedings relating to the determination of the applicant's claim for compensation for wrongful conviction and unjustified detention. It declared the remainder of the application inadmissible. In its report of 20 May 1998 (former Article 31), the Commission expressed the opinion that there had been a violation of Article 6 § 1 (eight votes to six). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[5].

FINAL SUBMISSIONS TO THE COURT

54. The applicant, in his pleading, requested the court to hold that there had been a breach of Article 6 § 1 of the Convention and to award him just satisfaction under Article 41 of the Convention.

55. The Government, for their part, requested the Court in their memorial to find that Article 6 § 1 of the Convention had not been violated in the present case.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

56. The applicant complained that the length of the proceedings in his case had exceeded a "reasonable time". He relied on Article 6 § 1 of the Convention, which provides, insofar as relevant:

> " In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…".

57. The applicability of Article 6 § 1 to the case was not disputed. The Court sees no reason to hold otherwise. The proceedings in question concerned a dispute over the applicant's right to compensation for his wrongful conviction and unjustified detention, which is a "civil right" within the meaning of Article 6 § 1 of the Convention (see the Georgiadis v. Greece judgment of 29 May 1997, *Reports* 1997-III, pp. 958-59, §§ 30-36).

A. PERIOD TO BE TAKEN INTO CONSIDERATION

58. The Court notes that the period to be taken into consideration began not on 13 April 1993, when the applicant initiated the proceedings, but on 1 May 1993, when Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect.

Contrary to the Government's contention that that period ended on 6 March 1996, when the Gdańsk Regional Court pronounced the second decision on the merits of the case, the Court finds that the relevant date was 26 March 1996, when that decision became final and enforceable.

Accordingly, the proceedings lasted two years and nearly eleven months.

59. However, in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, the Podbielski v. Poland judgment of 30 October 1998, *Reports* 1998-VIII, p. 3395, § 31).

B. REASONABLENESS OF THE LENGTH OF THE PROCEEDINGS

60. The reasonableness of the length of proceedings 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, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among other authorities, the Styranowski v. Poland judgment of 30 October 1998, *Reports* 1998-VIII, p. 3376, § 47).

1. COMPLEXITY OF THE CASE

61. The applicant maintained that the issues involved in the determination of his claim had not been complex. Moreover, the trial court could have simplified the process of obtaining evidence by, for instance, applying Section 322 of the Code of Civil Procedure and fixing the amount of compensation on the basis of its own assessment and all the relevant circumstances.

62. The Government disagreed. In their opinion there had been several factors rendering the case complex. The first and most important among them was the fact that the applicant's claim related partly to events which had occurred some eleven years previously. This made it difficult to establish facts relevant for the determination of the case such as the extent of the injuries allegedly sustained by the applicant during his detention and whether there was a causal link between his detention and the deterioration of his health. They further maintained that, given the nature of the applicant's claims, the trial court had had to obtain expert reports and extensive documentary evidence relating to his previous employment and earning capacity.

63. The Court considers that certain features of the case were complex. It was essential to obtain medical evidence in order to resolve the issue of whether there was a causal link between the applicant's detention and the deterioration of his health. In addition, the trial court, in order to assess the pecuniary damage sustained by the applicant in consequence of serving his sentence, had to obtain from several sources comprehensive evidence relating to his employment and loss of earnings.

2. CONDUCT OF THE APPLICANT

64. The applicant contended that his conduct had not contributed to the length of the proceedings. In particular, he considered that his refusal to undergo the brain tomography examination had been legitimate since, eventually, the courts had determined his claim without the help of that particular examination.

65. The Government argued that the conduct of the applicant and, more particularly, his refusal to co-operate with medical experts, had been the main factor resulting in the proceedings being substantially prolonged. They stressed that the preparation of the medical experts' reports had been significantly delayed because he had not kept his appointment for the brain tomography examination on 20 December 1994 and had later refused to undergo that examination. In the Government's opinion, such behaviour had amounted to a breach of the applicant's obligation to prove the facts relevant to his claim.

They also pointed out that the applicant had misinformed the court of certain important facts concerning his previous business activity, which had prolonged the process of obtaining evidence. Referring to the initial stage of the proceedings, the Government submitted that certain delays had been due to the applicant's conduct. In that respect they stressed that it had taken him several months (from 13 April to September 1993) to produce the documents relating to his claim, as requested by the court, and that in addition he had failed to submit his claim with adequate precision.

66. The Court firstly reiterates that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see, among other authorities, the Proszak v. Poland judgment of 16 December 1997, *Reports* 1997-VIII, p. 2774, § 40). Secondly, it notes that although the applicant's conduct in the initial stages of the case, especially prior to the first hearing held on 17 June 1994, cannot be regarded as hindering the progress of the proceedings, his subsequent behaviour was scarcely consistent with the diligence which should normally be shown by a claimant. His failure to submit himself to a brain tomography examination - which in the view of the experts was necessary to determine properly what injuries had been sustained by him - or, at least, to inform the court without undue delay of his decision not to undergo that examination undoubtedly delayed the proceedings, as did his inaccurate account of certain facts

relating to his employment (see paragraphs 31-35 above).

3. CONDUCT OF THE JUDICIAL AUTHORITIES AND THE QUESTION OF WHAT WAS AT STAKE FOR THE APPLICANT

67. The applicant alleged that, given the importance of what had been at stake for him in the proceedings, the Polish courts had failed to act with due diligence in dealing with his case. He stressed that, on account of the political situation in Poland, he had not been able to submit his claim to the courts for more than ten years. His claim had concerned compensation for a wrongful and politically-motivated conviction and he had been seeking satisfaction not only for economic loss but for injury to his feelings and reputation. Therefore, the nature of the claim had required the domestic courts to display "special diligence" in handling his case.

He further pointed out that there had been two substantial periods of inactivity on the part of the authorities: the first from 13 April 1993 to 17 June 1994 and the second from 17 June 1994 to 2 June 1995. The first hearing in his case had been held more than fourteen months after his claim had been submitted. Later, the case had been adjourned for nearly a year and a significant part of that period had been wasted in connection with the unnecessary brain tomography examination.

68. The Government maintained that by the time the applicant had set the compensation proceedings in motion, he had already been acquitted by the Supreme Court. Therefore, what remained at stake for him in the litigation were purely financial interests, not injury to his feelings or reputation.

In the Government's submission, the courts had not been responsible for any significant delays in the proceedings. The Government admitted that in the early stages of the case there had been some delay, in particular in the preparation of the case for the first hearing. However, that delay had been due to the backlog of similar compensation cases pending at the time in the Gdańsk Regional Court and, at least in part, to the fact that the applicant had failed to produce the documents requested by the court. In the subsequent course of the proceedings the courts had acted diligently and expeditiously and had done everything possible to bring the applicant's claim to a final determination.

69. The Court notes that by the time the applicant initiated the compensation proceedings, his reputation, insofar as it had been damaged by the wrongful and politically-motivated conviction, had already been restored as a result of the fact that his conviction had been quashed by the Supreme Court on 3 March 1993 (see paragraph 10 above). All that was at stake in those proceedings was, therefore, a compensation claim.

It is true that it took the Gdańsk Regional Court fourteen months to prepare the applicant's case for the first hearing and that the backlog of similar cases (twenty-eight of them) cannot be seen as a convincing explanation for the entire length of that period. However, except for that instance of failure to make progress in the proceedings, the Court does not find any substantial period of inactivity for which the authorities could be held responsible.

During the period under consideration the case was twice heard at first instance and once on appeal. The hearings were held at reasonable intervals and adjourned only when it was necessary to obtain evidence (see paragraphs 24 and 36-44 above). When the case was adjourned for about a year (from 17 June 1994), the Gdańsk Regional Court did not remain passive: not only did it obtain extensive medical and documentary evidence but it also duly supervised the experts' work and made efforts to ensure that the process of obtaining evidence followed its proper course (see paragraphs 25-30 above).

In view of these facts, the Court considers that, on the whole, the authorities did not fail to act with all due diligence in the conduct of the applicant's case.

4. CONCLUSION

70. In conclusion, regard being had to all the circumstances of the case, the length of the proceedings complained of cannot be regarded as unreasonable.

There has therefore not been a breach of Article 6 § 1 of the Convention.

FOR THESE REASONS THE COURT UNANIMOUSLY

Holds that there has been no breach of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 October 1999.

Signed: Christos ROZAKIS
President

Signed: Michele DE SALVIA
Registrar

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

1. Rules of Court B, which came into force on 2 October 1994, applied until 31 October 1998 to all cases concerning States bound by Protocol No. 9.

[5]. *Note by the Registrar.* A copy of the Commission's report is obtainable from the Registry.

HUMEN JUDGMENT OF 15 OCTOBER 1999