



The conviction and imprisonment of a well-known film producer did not infringe his Convention rights

In today's **Chamber judgment**¹ in the case of [Rywin v. Poland](#) (application no. 6091/06) the European Court of Human Rights held:

unanimously, that there had been **no violation of Article 3 (prohibition of torture and inhuman or degrading treatment)** of the European Convention on Human Rights,

by four votes to three, that there had been **no violation of Article 6 § 2 (presumption of innocence)** of the Convention, and

unanimously, that there had been **no violation of Article 6 § 1 (right to a fair trial)**

The case concerned a corruption scandal involving Mr Rywin, a well-known film producer, which arose in the context of parliamentary proceedings for the amendment of the Broadcasting Act.

The public prosecutor's office instituted proceedings against Mr Rywin and a parliamentary commission of inquiry was set up. The work of the commission of inquiry was carried out alongside the criminal proceedings against the applicant and gave rise to extensive media comment. On completion of the criminal investigation Mr Rywin was indicted for attempted trading in influence and was convicted by the first-instance court. The lower house of Parliament approved the report of the parliamentary commission of inquiry identifying five high-ranking State officials alleged to have been guilty of corruption in connection with the legislative procedure for the amendment of the Broadcasting Act. Mr Rywin was mentioned in the report as the "agent" of the above-mentioned officials. The Court of Appeal found him guilty of attempted fraud and sentenced him to two years and six months' imprisonment and a fine. Mr Rywin served part of his sentence and was released on parole.

The Court found that the authorities had been attentive to Mr Rywin's state of health and that the general conditions of his detention could not be criticised.

The Court observed that the wording of the resolution of the lower house of Parliament setting up the parliamentary commission of inquiry and the findings of the commission's report had not breached Mr Rywin's right to be presumed innocent.

With regard to the criminal proceedings, the Court observed that Mr Rywin had been convicted after adversarial proceedings during which it had been open to him to submit to the courts any arguments he deemed useful for his defence. The reasoning of the judgments delivered by the criminal courts did not reveal anything to suggest that the judges had been influenced by the statements of the members of the commission or by the findings in its report.

Principal facts

The applicant, Lew Rywin, is a Polish national who was born in 1945 and lives in Konstancin Jeziorna.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In December 2002 a leading national daily newspaper published an article on corruption in relation to the legislative procedure for the amendment of the Broadcasting Act. According to the article, Mr Rywin, a well-known film producer, had offered a bribe to representatives of the company that published the newspaper. Mr Rywin had reportedly offered to assist in amending the Broadcasting Act so that the company could buy a private television channel in exchange for 17.5 million United States dollars (USD), his appointment as chairman of the channel and an undertaking from the newspaper to refrain from publishing any criticism of the government. The applicant was said to have been acting on the instructions of a purported "group in power", which allegedly included certain high-ranking State officials, among them the Prime Minister.

In December 2002 the public prosecutor's office instituted proceedings against Mr Rywin for trading in influence. In January 2003 a parliamentary commission of inquiry was set up to investigate the irregularities in the above-mentioned legislative procedure. On 14 January 2003 the public prosecutor questioned Mr Rywin and informed him of the charge.

The work of the commission of inquiry, carried out alongside the criminal proceedings against the applicant, gave rise to extensive media comment. In June 2003 the criminal investigation was completed and Mr Rywin was indicted for attempted trading in influence. On 26 April 2004 the court found Mr Rywin guilty of attempted fraud and sentenced him to two years and six months' imprisonment and a fine of 100,000 zlotys (PLN). In August 2004 the applicant and the public prosecutor's office appealed. Mr Rywin argued that the influence of the parliamentary commission's work on the judges, aggravated by the media campaign, meant that he had not had a fair trial. On 24 September 2004 the Sejm (lower house of Parliament) approved the final report of the commission of inquiry identifying five senior government officials alleged to have been guilty of corruption in connection with the legislative procedure for the amendment of the Broadcasting Act. The applicant was mentioned in the report as the "agent" of the above-mentioned officials. On 10 December 2004 the Court of Appeal found Mr Rywin guilty of complicity in trading in influence and sentenced him to two years' imprisonment and a fine of PLN 100,000. Both Mr Rywin and the public prosecutor's office lodged cassation appeals. The Supreme Court dismissed both appeals.

In March 2005 Mr Rywin's lawyers applied to have the execution of his sentence deferred, submitting that its immediate enforcement would create a risk to his health in view of his various chronic medical conditions. The court refused to suspend the execution of the sentence. Subsequently, on an appeal by Mr Rywin, the Court of Appeal released him on 31 May 2005 and ordered an expert medical report to determine whether his state of health was compatible with imprisonment. In October 2005 the court recalled him to prison. In October 2006, on a further application by Mr Rywin, the court ordered his release on parole, with a two-year probationary period. An appeal by the public prosecutor's office against that decision was rejected.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Rywin complained that he had been imprisoned despite his state of health and that he had not received appropriate treatment in the prison environment. Relying on Article 6 §§ 1 (right to a fair trial) and 2 (presumption of innocence), he complained that he had not had a fair trial and that his right to be presumed innocent had been breached.

The application was lodged with the European Court of Human Rights on 1 February 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), *President*,
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),

Paul Mahoney (the United Kingdom),
Aleš Pejchal (the Czech Republic),
Paweł Wiliński (Poland),

and André Wampach, *Deputy Section Registrar.*

Decision of the Court

Article 3

The Court noted that Mr Rywin had been imprisoned after being sentenced by the Court of Appeal to two years' imprisonment. His imprisonment could be divided into two periods: one period of about a month and a half (from 18 April to 31 May 2005), and another of about one year (from 2 November 2005 to 14 November 2006). The Court further noted that, according to the medical reports, Mr Rywin suffered from a number of medical conditions.

As to the appropriateness of keeping the applicant in prison, the Court observed that this question had been examined on several occasions by the national authorities following the applications lodged by Mr Rywin himself. Hence, before he was imprisoned, the applicant had requested the deferral of his sentence on the ground that imprisonment would put his life and health at risk. His request was rejected on the ground that an expert's report had found that he could be imprisoned in a prison equipped with a medical unit. About a month and a half later, the Court of Appeal had annulled that decision on the ground that a new assessment of Mr Rywin's state of health was called for, and had ordered his release pending that assessment. Five months later the applicant had been re-imprisoned without a prior assessment.

As Mr Rywin had, on a number of occasions, remained unable to produce the requisite medical data, the courts had taken the view that he was seeking to obstruct the procedure to ascertain whether his state of health was compatible with detention. In ordering his re-imprisonment, the court had taken the view that the applicant's treatment by the prison medical services would enable the assessment to be carried out as requested. The Court also noted that the experts' reports and medical opinions obtained by the authorities after Mr Rywin's re-imprisonment had all indicated consistently that his state of health was not incompatible with detention.

As to the treatment provided to Mr Rywin, the Court noted that while in prison he had been monitored by the prison medical staff and also by specialists from outside the prison. The evidence in the file showed that the authorities had been attentive to Mr Rywin's state of health and that the general conditions of his detention could not be criticised.

The Court reiterated that it could not substitute its own view for that of the domestic courts with regard to the applicant's continuing detention, in particular where their decisions had been based on expert opinions and the national authorities had fulfilled their obligation to protect the applicant's physical well-being. It concluded that the conditions of Mr Rywin's imprisonment had not amounted to inhuman or degrading treatment and that there had been no violation of Article 3.

Article 6 §§ 1 and 2

Respect for the applicant's right to be presumed innocent

Mr Rywin complained both about the wording of the Sejm's resolution setting up the commission of inquiry and about the findings in the latter's report. The Court observed that the work of the parliamentary commission of inquiry had been conducted in parallel with the criminal proceedings against the applicant. The offending remarks had been made in the context of the case's broad media coverage, which was precisely what had led to the setting-up of the commission tasked with investigating allegations of corruption and unlawful interference by high-ranking figures of the State

in the legislative process. There had therefore been major reasons in the public interest for the procedure before the commission to be conducted publicly and transparently, and for public opinion to be informed about the findings of its report.

The Court took the view that, read in the light of the report as a whole and the context in which they had been made, the commission's findings had to be seen as a means for it to inform Parliament that the high-ranking public officials identified therein were strongly suspected of committing the offence of bribery. Even though the report had described the applicant as the "agent" of the individuals in question, it had not accused him directly or cast any judgment on his conduct. The report's conclusions had not included any finding as to whether criminal proceedings should be brought against Mr Rywin, or any comment on his possible criminal liability for complicity in bribery. Likewise, the commission's report had made no reference to the criminal proceedings brought against Mr Rywin.

The Court observed that, taking into account their meaning and context, neither the impugned terms of Parliament's resolution creating the parliamentary commission of inquiry nor the findings of the latter's report had concerned the question of Mr Rywin's guilt.

The Court concluded that the impugned statements had not breached the applicant's right to be presumed innocent. Accordingly, there had been no violation of Article 6 § 2.

Respect for the applicant's right to be tried by an independent and impartial tribunal

The Court observed that none of the judges had been criticised for demonstrating any personal bias or prejudice against Mr Rywin. The tribunal's subjective impartiality was therefore not at issue.

In the Court's view it was apparent that, even though the facts being investigated by the parliamentary commission had been the same as those being examined in the criminal proceedings against Mr Rywin, the aims underlying the two sets of proceedings had been different. The commission had been set up to investigate alleged shortcomings on the part of public authorities or officials in connection with the procedure to amend the Broadcasting Act. The parliamentary commission had not addressed Mr Rywin's criminal liability and had made no finding that breached his right to be presumed innocent.

The Court noted that cooperation between the commission and the judicial authorities conducting the criminal proceedings was permitted, and even in certain circumstances required, by domestic law, provided that it complied with the applicable domestic legal framework. It observed that the exchanges between the parliamentary commission and the criminal authorities had led the commission to bring the information it had gathered to the attention of the public prosecutor's office and the courts. There was nothing to suggest that the use of the information as evidence in the criminal proceedings had taken place in breach of the relevant legal rules. The Court observed, moreover, that the applicant's complaint that the Warsaw Regional Court had been influenced by the work of the parliamentary commission of inquiry and by the press coverage of the proceedings had been dismissed by the Warsaw Court of Appeal on the ground that no tangible evidence to that effect had been adduced.

In sum, the Court observed that Mr Rywin had been convicted after adversarial proceedings during which it had been open to him to submit to the courts any arguments he deemed useful for his defence. The reasoning of the judgments delivered by the criminal courts did not reveal anything to suggest that, in their interpretation of domestic law or in their assessment of the parties' arguments and the evidence for the prosecution, the judges had been influenced by the statements of the members of the commission or by the findings in its report.

Accordingly, the Court did not detect any infringement of the principle of fairness in the criminal proceedings against Mr Rywin or, in particular, any breach of his right to be tried by an independent and impartial tribunal.

There had therefore been no violation of Article 6 § 1 of the Convention.

Separate opinion

Judges M. Lazarova Trajkovska, L. Bianku and L.-A. Sicilianos expressed a joint separate opinion which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.