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

FOURTH SECTION

CASE OF JABŁOŃSKI v. POLAND

(*Application no. 33492/96*)

JUDGMENT

STRASBOURG

21 December 2000

In the case of Jabłoński 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 V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 7 July and 12 December 2000,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Polish Government ("the Government") on 26 January 1999. It originated in an application (no. 33492/96) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for by a Polish national, Mr Henryk Jabłoński ("the applicant"), on 2 January 1995.

2. The applicant, who had been granted legal aid, was represented by Mrs Z. Daniszewska-Dek, a lawyer practising in Białystok (Poland). The Polish Government were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his detention on remand had been excessive; that in the proceedings before the Supreme Court, concerning the prolongation of his detention beyond the statutory time-limit the lawfulness of his detention had not been decided "speedily"; and that his right to a "hearing within a "reasonable time" had not been respected.

4. The application was declared partly admissible by the Commission (Second Chamber) on 16 April 1998. In its report of 21 October 1998 (former Article 31 of the Convention) it expressed the unanimous opinion that there had been a violation of Article 5 § 3, Article 5 § 4 and Article 6 § 1 of the Convention.

5. On 31 March 1999 the panel of the Grand Chamber decided that the case should be considered by one of the Sections of the Court. Subsequently, 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. The applicant and the Government each filed observations on the merits (Rule 59 § 1). Subsequently, the Chamber, after consulting the parties, decided that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's detention and proceedings against him

7. On the night of 23 April 1992 the applicant went to a doctor, asking him to come to the aid of J.C. He alleged that the latter had been seriously battered by unknown persons. J.C., who suffered serious injuries to his head, was immediately taken to hospital. His life was saved. On 21 May 1992 the Białystok Regional Prosecutor (*Prokurator Wojewódzki*) charged the applicant with aggravated theft, armed robbery and attempted homicide, and detained him on remand in view of the reasonable suspicion that he had committed the offences with which he had been charged and their serious nature. The investigation was completed on 12 August 1992.

8. Shortly after that date, the applicant asked for an order referring the case for a further investigation. In particular, he asked for evidence to be obtained from certain witnesses. The prosecutor dismissed his request for witnesses to be called but ordered that an expert report be obtained from psychiatrists in order to ascertain the applicant's mental state.

9. On 12 October 1992 the Białystok Regional Prosecutor lodged a bill of indictment with the Białystok Regional Court (*Sąd Wojewódzki*). The applicant was indicted on charges of attempted homicide, armed robbery and aggravated theft.

10. From October 1992 until the end of 1993 the applicant, who was at the material time detained in Białystok Remand Centre, was on hunger strike. On 26 October 1992 he apparently intentionally injured his left hand.

11. On 1 September 1993 the Białystok Regional Court rejected the applicant's request for release made on an unknown date. The court held that the reasons originally given for his detention, that is to say, the reasonable suspicion that he had committed the offences with which he had been charged and the serious nature of those offences, were still valid. On

the other hand, the court found no reason to release the applicant on health grounds or on any of the grounds listed in Article 218 of the Code of Criminal Procedure (see also paragraph 60 *in fine* below) because it considered that the applicant's continued hunger strike was aimed at compelling the court to make a "favourable decision" on his detention.

12. On 9 December 1993 the applicant was admitted to the hospital of the Faculty of Gastrology of the Białystok Academy of Medicine. He received treatment until 17 December 1993. An entry in the relevant medical record made on 17 December 1993 read, in so far as relevant:

> "[the applicant] was admitted to our hospital in a state of extreme exhaustion..., he complained about general weakness, pain in his chest and heart palpitations. Subsequent tests showed that there was an extremely low level of haemoglobin in his blood ... [4.1% and 6.7% according to the tests] ... resulting from a chronic deficiency of iron and vitamins. During the treatment he was given two transfusions and iron compounds were administered ... as a result his condition improved ... Recommendations: good food and further treatment. From the medical point of view, he should not now be kept in prison."

13. On 17 December 1993 the applicant was taken to and redetained in Barczewo Prison. He was placed in a ward for internal diseases, where he remained until 24 December 1993. He was diagnosed as having anaemia and gastritis. Since the applicant had not consented to any further medical tests and had refused to take medicaments, he was again placed in a prison ward.

14. In the meantime, the trial court had listed hearings for 27 November 1992, 20 January, 2 June and 24 September 1993 but had cancelled all of them on the ground that the applicant had been on hunger strike. On 1 December 1993 the trial was adjourned because the applicant had refused to leave his cell.

15. On 4 January 1994 the applicant wrote a letter to the Minister of Justice, requesting that he release him in view of the very bad state of his health. That letter was deemed to be an application for release under Article 214 of the Code of Criminal Procedure, referred to the Białystok Regional Court and dismissed by that court on 31 January 1994. The court found that the applicant's detention should continue because there was a reasonable suspicion that he had committed the serious offences with which he had been charged. The court agreed that from the medical point of view the applicant should not be kept in prison. It stressed, however, that his poor health resulted from his behaviour, especially his hunger strike, and therefore refused to release him.

16. On 14 February 1994, on an appeal by the applicant, the Białystok Court of Appeal (*Sąd Apelacyjny*) upheld that decision and the grounds given for it.

17. On 13 March 1994 the applicant inserted several pieces of metal into his right eye. On 20 and 27 March 1994 he inserted pieces of metal into his

left eye. On 23 March 1994 he was examined by a psychiatrist who concluded that those acts of self-harm were a form of his protest against the prolongation of the criminal proceedings against him and his detention. Later, the applicant was placed in an ophthalmic ward of Bytom Prison Hospital where he received treatment from 25 April to 23 June 1994. After that treatment, three pieces of metal were left in the applicant's eyes.

18. On 29 April 1994 the Białystok Regional Court dismissed a subsequent application for release, originally addressed by the applicant to the State Council of Judiciary (*Krajowa Rada Sądownictwa*) and referred by the Council to the trial court. The court considered that the applicant should be held in detention for the following reasons:

> "... In the light of documentary evidence, it is beyond any dispute that the state of [the applicant's] health is not the best one. However, he himself is responsible for that because he has brought himself [to this state] by his several-week long hunger-strikes, acts of self-harm and his further refusal to undergo medical treatment. ...
>
> The court cannot lift the detention order because of the nature of the offences charged, the serious social danger created by them and the fact that [the applicant] is tried as a recidivist within the meaning of Article 60 § 1 of the Criminal Code, militate against it.
>
> It must, however, be noted that the state of [the applicant's] health, although not a good one, does not constitute a danger to his life within the meaning of Article 218 of the Code of Criminal Procedure because he is under medical care and [his condition] has resulted from his own acts. ..."

19. On an unknown date in June 1994 the applicant again asked the Białystok Regional Court to release him on health grounds. The application was dismissed on 29 June 1994. On 15 July 1994 the applicant made a further application for release, submitting that, in the meantime, he had received a letter from a civil hospital in Katowice confirming that he could be admitted to that hospital in order to undergo ophthalmic treatment. The application was dismissed at first instance on 15 July 1994 and, on appeal, by the Białystok Court of Appeal, on 11 August 1994. Both courts held that there was no valid reason to release the applicant as his condition, even though serious, had been aggravated by the injuries which he had inflicted on himself. The courts also relied on the reasonable suspicion that he had committed the offences with which he had been charged and their serious nature.

20. On 31 August 1994 the applicant asked the Białystok Regional Court to obtain evidence from an expert in ophthalmology. He maintained that he was suffering from an unbearably severe pain in his eyes. The court referred the matter to the authorities of Białystok Remand Centre. On 28 September 1994 the Deputy Governor dealt with that application and refused to call an ophthalmologist on the grounds that in the opinion of the doctors who had previously examined the applicant there had been no need to treat him in a

civil hospital and that the Chief Prison Doctor of Białystok Region did not consider it appropriate to call such an expert.

21. On 5 October 1994 a hearing was to take place but was cancelled since, in the meantime, the applicant had inflicted certain unspecified injuries on himself. On 22 November 1994 the Regional Court cancelled the next hearing because the applicant, when leaving his cell had injured himself by hitting his head against a wall. He was then taken to Białystok Hospital and examined by a neurologist.

22. On 5 December 1994 the court adjourned the trial hearing because it found that the applicant had again inflicted injuries on himself (he had injected saliva into his leg and had an abscess and boil on his knee).

23. On 17 January 1995 the trial was adjourned because the applicant had taken an overdose of an unspecified medicine.

24. From 17 to 22 February 1995 the applicant received treatment in Barczewo Prison Hospital. In view of that, the court cancelled a hearing listed for 21 February 1995.

25. Subsequently, on an unknown date, the applicant swallowed two metal rods and three pieces of wire. He did not consent to undergo an operation in the prison hospital. Since he was not fit to be brought to trial, the court cancelled a hearing fixed for 27 April 1995.

26. On 28 April 1995 the court asked the Governor of Barczewo Prison about the applicant's health and when the applicant would be transferred to Białystok Remand Centre. On 10 May 1995 the Director of Barczewo Prison Hospital replied that the applicant had repeatedly inflicted injuries on himself (that is to say, he had swallowed pieces of metal) and had refused to undergo an operation. It was therefore impossible for the prison services to transfer him to Białystok Remand Centre (Białystok is some 150 kilometres distant from Barczewo).

27. On 6 June 1995 the trial court again asked the authorities of Barczewo Prison about the state of the applicant's health. The Director of Barczewo Prison Hospital replied on 23 June that the applicant should stay in the hospital because he had pieces of metal both in his eyes and in his alimentary canal**.**

28. Later, the Białystok Regional Court asked the Supreme Court (*Sąd Najwyższy*) to transfer the applicant's case to another regional court, a court closer to the prison in which the applicant was being held in custody. The Supreme Court rejected that request on 17 August 1995.

29. On 5 September 1995 the Deputy Governor of Barczewo Prison informed the Regional Court that the applicant was still unfit for a transfer because he had again swallowed a piece of metal.

30. On 25 October 1995 the court asked the authorities of Barczewo Prison about the state of the applicant's health. The Director of Barczewo Prison Hospital replied on 20 November 1995 that the applicant did not

have to undergo on operation on his eyes but that it was recommended that he undergo an operation on his stomach.

31. On 24 November 1995 the Białystok Regional Court dismissed a subsequent application for release made by the applicant on an unspecified date. In its decision, the court relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and their serious nature. Finding that there were no special circumstances that might justify releasing him on health grounds, the court also took into account a medical certificate which stated that the applicant could receive medical treatment in prison.

32. In the meantime, at the beginning of November 1995, the applicant had complained to the prison authorities about various ailments, in particular a cyst in his kidney and urinary problems. Several ultrasound examinations carried out at that time showed that the applicant had a cyst of a diameter of twenty millimetres in his kidney. He refused to undergo a kidney operation in the urological ward of Łódź Prison Hospital and requested to be released so as to enable him to receive medical treatment in a civil hospital.

33. On 15 December 1995 the Białystok Regional Court asked the Governor of Barczewo Prison whether the applicant could be transferred to Białystok Remand Centre. The Governor replied on 15 February 1996. He stated that prison doctors considered that the applicant was unfit for a transfer.

34. On 20 December 1995 the applicant made an application for release to the Supreme Court.

35. On 29 December 1995 the Białystok Regional Court decided to apply to the Supreme Court for the applicant's detention on remand to be prolonged until 30 December 1996. That application was made in view of the fact that an amendment to Article 222 of the Code of Criminal Procedure (setting maximum statutory time-limits for detention on remand) was to take effect on 1 January 1996 (see paragraph 61 below) and at the time the applicant's detention had already exceeded the relevant time-limit. In that application, the court relied on the following, principal reasons:

> "The trial was set for 27 November 1992 but it did not take place because the accused went on hunger strike for several months. When the accused finished his hunger strike, he deliberately inflicted injuries on himself in order to compel [the court] to make a favourable decision to vary the preventive measure imposed on him. ...
>
> That made it impossible for that court to continue, or even to start, the trial. In view of the state of his health, a state resulting from his own behaviour, [the applicant] was on several occasions examined by doctors of various specialities and was admitted to hospital for several months. It did not (and does not) emerge from the expert opinions that his state would endanger his life or health, especially as [the applicant] is under permanent medical care. At present, he is held in Barczewo Prison Hospital.

> For these reasons the application for his detention to be prolonged is justified. His detention should be prolonged until 30 December 1996 because, given his acts of self-harm, it is not known when the accused will be brought to trial."

Since the relevant amendment did not come into force until 4 August 1996, that application was never lodged with the Supreme Court.

36. On 30 December 1995 the Supreme Court transferred the applicant's application for release of 20 December 1995 to the Białystok Regional Court. On 15 January 1996 the President of the Białystok Regional Court transferred it to the Chief Judge of the Criminal Division of that court.

37. On 19 January 1996 the panel of three judges, sitting as the Białystok Regional Court dismissed that application, holding that there were no circumstances concerning the applicant's health which might militate in favour of his release and that the bad state of his health had been caused entirely by his own conduct. The court considered that the applicant wanted to compel it to "make a favourable decision on his detention" and that the "impossibility of bringing him to trial had diminished the chances of resolving his complaints".

38. In the meantime, on an unknown date, the applicant had complained to the Supreme Court about the length of his detention, which had already exceeded three years. On 25 January 1996 his complaint was referred to the Białystok Court of Appeal. On 8 February 1996 the Vice President of that court replied to the complaint. He stated that hearings in the applicant's case had been cancelled five times because the applicant had gone on hunger strike and then on the ground that he had inflicted injuries on himself. He also stressed that there had been no indication that the applicant should have been released on health grounds because he was, and had been, under medical care in prison.

39. On 8 March 1996 the court asked the authorities of Barczewo Prison about the applicant's health. The Director of Barczewo Prison Hospital replied on 19 March 1996. He stated that the applicant had some of the metal objects he had swallowed in his stomach but he had refused to undergo an operation in the prison hospital. In the Director's opinion, the applicant was fit to participate in his trial but unfit to be transferred to Białystok.

40. Later, the applicant asked the Białystok Regional Court to release him in view of his state of health. That application was dismissed on 29 March 1996. The applicant appealed against the refusal, arguing that his detention on remand had meanwhile exceeded four years and that his state of health was desperately bad.

41. On 19 April 1996 the Białystok Court of Appeal dismissed that appeal, finding that even though the applicant had been held in custody for nearly four years, the prolongation of his detention had been attributable to his behaviour alone. The court considered that the grounds originally given for his detention were still valid. It pointed out that the further course of the

proceedings exclusively depended on the applicant's behaviour. It suggested that a change in the applicant's attitude would result in the immediate examination of his case and that such a change might in turn have resulted in the court's "altering its view on whether the detention should be continued".

42. On 24 April 1996 the court asked the authorities of Barczewo Prison whether the applicant could be transferred to Białystok. On 8 May 1996 the Director of Barczewo Prison Hospital informed the court of, *inter alia*, the following:

> "... [the applicant] repeatedly inflicts injuries on himself. The last instance of such behaviour took place on 7 February 1996. For that reason, he is unfit for a transfer. He can participate in his trial."

43. On an unknown date in May or June 1996 the applicant made a subsequent application for release. On 11 June 1996 the Białystok Regional Court dismissed it in view of the high probability that he had committed the offences with which he had been charged and their serious nature. The court also found no circumstances militating in favour of releasing the applicant on health grounds, as defined in Article 218 of the Code of Criminal Procedure. In that context, it pointed out that the applicant's health depended on himself, especially as its current state had resulted from his hunger strike and self-inflicted injuries. Finally, the court stressed that it emerged from medical evidence that his continued detention did not constitute a danger to his life or health.

44. On 10 July 1996 the court asked the authorities of Barczewo Prison whether the applicant could be transferred to Białystok Remand Centre. They replied on 16 July 1996, stating that the applicant had refused to undergo an operation on his stomach. It was recommended that he be detained in a prison hospital ward. No obstacles to transferring the applicant to Białystok were mentioned.

45. On 6 August 1996 the Białystok Regional Court requested the Supreme Court to prolong the applicant's detention on remand until 30 July 1997 in view of the fact that he had attempted to obstruct the proper conduct of the proceedings. The court also stated:

> "... detention should be prolonged until 30 July 1997 ... since the accused has inflicted injuries on himself and therefore, it is not known when he will be fit to be brought to trial."

46. On 5 September 1996 the Supreme Court, sitting *in camera*, prolonged the applicant's detention until 1 March 1997, finding that the applicant had in an exceptional manner obstructed the proper conduct of the proceedings and had intentionally contributed to their length. The court also held that it was not necessary to prolong his detention until 30 July 1997 and that by 1 March 1997 the Regional Court should be able to order an additional medical examination of the applicant, to list hearings and to give

judgment. On 18 September 1996 a copy of the decision of the Supreme Court was served on the applicant.

47. On 13 September 1996 the applicant complained to the Minister of Justice about the length of his detention and the conduct of the proceedings in his case. This complaint was transferred to the Białystok Regional Court and, on 3 October 1996, the President of that court replied to it. He found that there had been no irregularities in the conduct of the proceedings. He stated that all the twelve hearings listed in the period from 27 November 1992 to 27 April 1995 had been cancelled because the applicant had inflicted injuries on himself.

48. On an unknown date – apparently in September 1996 – the applicant again requested his release on health grounds. On 24 September 1996 the Białystok Regional Court dismissed his application, holding that there was a reasonable suspicion that he had committed the offences in question and that the need to ensure the proper conduct of the proceedings militated against his release. The court also held that there was no reason to release the applicant on health grounds because the ailments from which he suffered did not constitute a danger to his life or health and had resulted from his own deliberate acts of self-harm.

49. On 10 October 1996, on the applicant's appeal, the Białystok Court of Appeal upheld that decision and held, *inter alia*:

> "It is true that the accused is sick, although most of his ailments result from self-inflicted injuries. For that reason he is under constant medical observation in prison. He also consults doctors. The prison authorities have not indicated that his condition worsened so significantly as to result in his detention in the prison hospital being a danger to him.
>
> As to the second argument adduced by the accused, an argument which in reality amounts to his objection to evidence [against him], it has to be noted that the trial court has at its disposal evidence gathered by the prosecution but has been unable to scrutinise it because the accused has been obstructing the conduct of the trial. It would therefore be in the accused's best interest to endeavour to have his case heard. ..."

50. On 21 November 1996 the applicant was transferred to Białystok Remand Centre. On 9 December 1996 the Białystok Regional Court listed a hearing for 31 December 1996; however, that hearing was adjourned to 10 January 1997. On 24 February 1997 the trial was adjourned as most of the witnesses and the victim had failed to appear.

51. During the hearings of 27 and 28 February 1997 the Regional Court heard evidence from witnesses and dismissed the applicant's request for further evidence to be obtained. On 28 February 1997 the court gave judgment. It convicted the applicant of aggravated theft and attempted homicide and sentenced him to fifteen years' imprisonment, deprivation of his civil rights for eight years and a fine of 400 Polish zlotys.

52. The applicant appealed. Subsequently, on an unspecified date, he challenged J.D.-S. and J.Z.-L., two judges of the Białystok Court of Appeal

assigned to sit on the appeal panel, submitting that both of them had previously dealt with his applications for release and that they did not, therefore, offer sufficient guarantees of impartiality. His challenge was dismissed by the Białystok Court of Appeal on 9 September 1997 as being ill-founded.

53. On the same day the court held an appellate hearing and gave judgment dismissing the applicant's appeal.

54. On 18 September 1997 a copy of the judgment of the Białystok Court of Appeal was served on the applicant. On 1 October 1997 he filed a notice of cassation appeal, requesting the court to serve the statement of the reasons for the judgment on him. He submitted it to the authorities of Barczewo Prison on 3 October 1997.

55. On 20 October 1997 the Białystok Court of Appeal rejected the applicant's notice of cassation appeal because he had lodged it outside the seven-day time-limit provided for by Article 464 § 3 of the Code of Criminal Procedure.

56. On 1 November 1997 the applicant requested the Minister of Justice to lodge a cassation appeal on his behalf. The request was dismissed on 22 January 1998. Later, the applicant – also unsuccessfully – asked the Ombudsman (*Rzecznik Praw Obywatelskich*) to lodge a cassation appeal on his behalf. That application was rejected on 11 December 1998.

B. Medical treatment received by the applicant during his detention

57. During the entire period of the applicant's detention the Polish prison authorities kept detailed medical records concerning his state of health. His records contained, among other things, entries relating to the injuries that he inflicted on himself.

An entry made on 16 May 1996 contains a doctor's note, which read, in so far as relevant:

> "Objects in [the] stomach?"

An entry made on 20 November 1996 read:

> "refusal to undergo an X-ray examination; no confirmation as to the objects in his stomach."

A doctor's note of 28 December 1996 read, in so far as relevant:

> "Complaints by a detainee, previous ailments and operations: objects in eyes: no complaints at present; objects in his stomach: on 25 October and 20 November 1996 [the applicant] refused to undergo an X-ray examination; on 23 December 1996 [he] claimed that there were no further objects. ... I administer a further X-ray examination. [He] complains about a pain in his stomach. ... Psychiatric examination of 4 November 1996 disclosed an abnormal personality...
>
> Diagnosis: objects in eyes; [as regards the] objects in the stomach, [to date] in the absence of results of the X-ray examination there is no confirmation that, as [the

applicant] states, there are no such objects ... General condition: good; some peritoneal symptoms ... Conclusions: [the applicant] can be detained in prison. Doctor [name and signature illegible].”

A subsequent X-ray examination made in January 1997 did not disclose any objects in the applicant’s stomach; it confirmed a diaphragm hernia.

II. RELEVANT DOMESTIC LAW AND PRACTICE

58. At the material time the rules governing detention on remand were contained in Chapter 24 of the Law of 19 April 1969 – Code of Criminal Procedure (*Kodeks postępowania karnego*) – entitled “Preventive measures” (*Środki zapobiegawcze*). The Code is no longer in force. It was repealed and replaced by the Law of 6 June 1997 (commonly referred to as the “New Code of Criminal Procedure”), which entered into force on 1 September 1998.

59. The Code listed as preventive measures, *inter alia*, detention on remand, bail and police supervision.

Article 209 set out the general grounds justifying imposition of the preventive measures. This provision read:

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

Article 217 § 1 defined grounds for detention on remand. The relevant part of this provision, in the version applicable until 1 January 1996, stipulated:

> “1: Detention on remand may be imposed if:
>
> (1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when he has no fixed residence [in Poland] or his identity cannot be established; or
>
> (2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper course of the proceedings by any other unlawful means; or
>
> (3) an accused has been charged with a serious offence or has relapsed into crime in the manner defined in the Criminal Code; or
>
> (4) an accused has been charged with an offence which creates a serious danger to society.
>
> ...”

On 1 January 1996 sub-paragraphs 3 and 4 of Article 217 were repealed and the whole provision was redrafted. From that date onwards the relevant sub-paragraphs read:

"(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent abode [in Poland]; or

(2) [as it stood before 1 January 1996]."

Paragraph 2 of Article 217 provided:

"If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years' imprisonment, or if a court of first instance has sentenced him to at least three years' imprisonment, the need to continue detention in order to ensure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed."

60. The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

Article 213 § 1 provided:

"A preventive measure [including detention on remand] shall be immediately lifted or varied, if the basis for it has ceased to exist or new circumstances have arisen which justify lifting a given measure or replacing it with a more or less severe one."

Article 225 stated:

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

The provisions for "mandatory detention" (for instance, detention pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June on Amendments to the Code of Criminal Procedure and Other Criminal Statutes.

Finally, Article 218 stipulated:

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

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

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

61. Until 4 August 1996, i.e. the date on which the relevant provisions of a new Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes entered into force, the law did not set out any time-limits concerning detention on remand in the court proceedings.

Originally, the provisions setting out time-limits for detention were to enter into force on 1 January 1996; however, their entry into force was eventually postponed until 4 August 1996.

Article 222 of the Code of Criminal Procedure in the version applicable after 4 August 1996, insofar as relevant, provides:

> "3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning offences. In cases concerning serious offences [offences for the commission of which a person is liable to a sentence of a statutory minimum of at least three years' imprisonment] this period may not exceed two years.
>
> 4. In particularly justified cases the Supreme Court may, on the application made by the court competent to deal with the case, ... prolong detention on remand for a further fixed period exceeding the time-limits set out in paragraphs. 2 and 3, when it is necessary in connection with a suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings in the terms referred to in paragraph 3."

On 28 December 1996, by virtue of the Law of 6 December 1996, paragraph 4 of that Article was amended and the grounds for prolonging detention beyond the statutory time-limits included also:

> "... other significant obstacles, which could not be overcome by the authorities conducting the proceedings..."

62. The Supreme Court' decision on an application under Article 222 § 4 constituted a separate legal basis for continued detention. No appeal lay in law against such a decision.

In cases where the Supreme Court dismissed such an application, a detainee had to be released. As long as it had not reached a decision, an application under Article 222 § 4 was treated as a basis for the continued detention.

63. As from 1 January 1996, a party to criminal proceedings could lodge a cassation appeal (*kasacja*) with the Supreme Court against any final decision of an appellate court which had terminated the proceedings.

Under Article 467 § 2 of the Code of Criminal Procedure, the court which gave the decision to be appealed against was competent to decide whether the formal requirements of a cassation appeal had been complied with. If an accused's appeal had not been filed and signed by a lawyer, it had to be rejected. If an appeal had complied with the formal requirements, the case was forwarded to the Supreme Court. According to paragraph 4 of Article 467, if the Supreme Court found that the appeal was inadmissible, it gave a decision on "not taking cognisance of the merits of the cassation appeal" (*postanowienie o pozostawieniu kasacji bez rozpoznania*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 of THE CONVENTION

64. The applicant complained that his detention on remand had been excessive and he alleged a violation of Article 5 § 3 of the Convention, the relevant part of which provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Period to be taken into consideration

65. It was common ground that the applicant's detention started on 21 May 1992, when he had been remanded in custody on charges of aggravated theft, armed robbery and attempted homicide and that, for the purposes of Article 5 § 3 of the Convention, it ended on 28 February 1997, when he had been convicted at first instance. The applicant had accordingly been held in pre-trial detention for four years, nine months and seven days in all.

66. However, as Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect on 1 May 1993, the period of his detention before that date lies outside the Court's jurisdiction *ratione temporis* (see *Kudła v. Poland* [GC], no. 30210/96, § 103, ECHR 2000-...).

The Court consequently finds that the period to be considered under Article 5 § 3 was three years, nine months and twenty-seven days. Nevertheless, in determining whether the applicant's continued detention from 1 May 1993 onwards was justified, the Court will take into account the fact that by that date the applicant had already been in custody for nearly one year (see the Yağci and Sargin v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 18, § 49).

B. Reasonableness of the length of detention

1. Arguments of the parties

67. The applicant maintained that his detention had been excessively long and that the authorities had failed to give valid reasons for it. He went on to argue that as early as December 1993, when he had been placed in the hospital of the Białystok Academy of Medicine in a state of extreme exhaustion resulting from his hunger strike, it had been established beyond

any doubt that from the medical point of view he should not have been kept in prison.

Yet the authorities had taken no notice of that medical recommendation and had held him in pre-trial detention for nearly four further years, repeating that his state of health had depended only on his own conduct.

68. The courts had not, the applicant asserted, given sufficient and relevant reasons for his continued detention. Their decisions were laconic, vague and sketchy. During the entire period in issue they had repeatedly relied on the reasonable suspicion that he had committed the offences with which he had been charged, the serious nature of those offences and – sometimes – they had added that the original grounds for his detention had still been valid.

69. The applicant further submitted that the courts had never considered the imposition of other, more lenient preventive measures on him, even though such alternative means of ensuring his presence at trial had been provided for by Polish law. In their decisions, they had never explained why bail or police supervision, or both of those measures, would not have guaranteed that the proceedings followed their proper course.

70. In the applicant's view, the Białystok Regional Court had completely misconstrued his behaviour, treating his acts of self-harm in prison as attempts to compel it to give decisions in his favour and making it yet another reason for their refusal to release him. For instance, in assessing whether he should be released or still kept in custody, the court had considered that it had been irrelevant how bad his state of health had become because his bad condition had resulted only from his own behaviour. That should not have been regarded as a relevant ground for his continued detention: no such legal basis for depriving a person of his liberty could be found among those listed in Article 217 of the Code of Criminal Procedure.

71. Furthermore, the court had on several occasions suggested that both the continuation of his detention and the conduct of the trial had depended solely on his behaviour, whereas in reality the court itself had been primarily responsible for dispensing justice.

72. The applicant also explained that such attitude towards him, taken together with the fact that the authorities had hardly responded at all to his numerous grievances, had given rise to his desperate and repeated acts of self-harm, aimed at drawing the trial court's attention to his misery.

73. Lastly, the applicant asserted that the judicial authorities had not shown any special diligence in the conduct of the proceedings. In particular, he could have been transferred from Barczewo to Białystok as early as 16 July 1996 but the transfer had not taken place before 21 November 1996 and, as the hearing set for 31 December 1996 had been adjourned, the trial had in effect started on 10 January 1997. In his opinion, those several months of inactivity could hardly be seen as an example of

"special diligence" on the part of the Białystok Regional Court, the more so as at that time he had already spent in detention four and a half years, which had been more than twice as much as the highest statutory time-limit.

74. The Government disagreed. They argued that the applicant's conduct had forced the courts to prolong his detention. He had frequently gone on hunger strikes and had many times inflicted injuries on himself. He had injured his hand, knee, had swallowed metal rods and wire, and had taken an overdose in order to feel unwell. The last instance of such behaviour had taken place on 7 February 1996, when he had swallowed a metal rod and had since then been receiving medical treatment. In the Government's submission, the total delay in the proceedings attributable to the applicant's conduct had been three years, two months and sixteen days and it had occurred from 1 May 1993 to 16 July 1996.

75. The Government further maintained that the applicant's state of health had for a long time been so bad that the authorities could not transfer him to Białystok, where he had been tried. The applicant had persistently refused to undergo an operation whereby metal rods could have been removed from his stomach. That resulted in his having been kept in Barczewo Prison Hospital until 21 November 1996.

76. As to the question whether the authorities displayed "special diligence" in the conduct of the proceedings, the Government submitted that, first of all, the courts had acted lawfully and that all their decisions prolonging the applicant's detention had had a sufficient legal basis.

77. The Government considered that at no stage of the proceedings had the authorities failed to act diligently and expeditiously. Although there had for a long time been no progress in the trial, no failure in that respect could be found on the part of the Regional Court because during that period the applicant had been unfit to be brought to trial. The court had on a regular basis asked the authorities of Barczewo Prison about his state of health. Yet it had not been able to set any date for trial since it had been impossible to transfer the applicant to Białystok. The court had made all efforts to expedite the trial: it had even asked the Supreme Court to assign the case to another regional court, but to no avail.

78. The Government consequently invited the Court to find that there had been no violation of Article 5 § 3 of the Convention in the present case.

2. The Court's assessment

79. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence,

outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* cited above, §§ 110 et seq.).

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned demand of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see also the Muller v. France judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 35).

80. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings (ibid.).

81. The Court observes that in the present case the judicial authorities first of all relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, the serious nature of those offences and the need to ensure the proper conduct of the proceedings. They repeated those grounds in nearly all their decisions made from 1 May 1993 to 28 February 1997 (see paragraphs 11, 15-16, 18-19, 31, 37, 40-41, 43, 45-46 and 48-49 above).

When the applicant went on hunger-strike and, afterwards, when he repeatedly inflicted various injuries on himself, the courts began to base their decisions on the fact that his poor condition was caused by his deliberate acts of self-harm in prison and for that reason refused to release him on health grounds. They considered that the applicant's behaviour was aimed at forcing them to release him. They also held that the applicant should be kept in custody because, given that he was under medical care in prison, his continued detention did not amount to a danger to his life (see paragraphs 18-19, 31, 37, 41 and 43 above).

It would also appear from the application made by the Regional Court to the Supreme Court, and from the latter court's decision to extend the applicant's detention beyond the statutory time-limits, that the fact that the applicant had previously inflicted injuries on himself and had thus obstructed the progress of his trial was the principal reason why his

detention was prolonged for six further months (see paragraphs 45-46 above).

82. The Court accepts that the suspicion against the applicant of having committed the serious offences with which he had been charged may initially have justified his detention. Yet the Court does not accept that it could constitute a "relevant and sufficient" ground for his being held in custody for the entire relevant period.

The applicant suggested that the courts should have released him because his health was very bad and had constantly been aggravated by his detention. The Court would however point out that Article 5 § 3 cannot be read as obliging the national authorities to release a detainee on account of his state of health. The question of whether or not the condition of the person in custody is compatible with his continued detention should primarily be determined by the national courts and, as the Court has held in the context of Article 3 of the Convention, those courts are in general not obliged to release him on health grounds or to place him in a civil hospital to enable him to receive a particular kind of medical treatment (see *Kudła v. Poland* cited above, § 93).

83. On the other hand, the Court observes that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that Article lays down not only the right to "trial within a reasonable time or release pending trial" but also provides that "release may be conditioned by guarantees to appear for trial" (see, *mutatis mutandis*, the Neumeister v. Austria judgment of 27 June 1968, Series A no. 8, p. 3, § 3).

That provision does not give the judicial authorities a choice between either bringing the accused to trial within a reasonable time or granting him provisional release – even subject to guarantees. Until conviction he must be presumed innocent, and the purpose of Article 5 § 3 is essentially to require his provisional release once his continuing detention ceases to be reasonable (see the Neumeister judgment cited above, § 4).

84. Turning to the circumstances of the present case, the Court notes that over the period of those several years which the applicant spent in pre-trial detention no consideration appears to have been given to the possibility of imposing on him other "preventive measures" – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings (see paragraph 60 above).

Repeating that the applicant should be kept in detention in order to ensure the proper conduct of the trial, the relevant courts did not take into account any other guarantees that he would appear for trial. They did not mention why those alternative measures would not have warranted his presence before the court or why, had the applicant been released, his trial would not have followed its proper course. Nor did they point to any factor

indicating that there was a risk of his absconding, going into hiding, or otherwise evading justice.

In that context, the Court also finds that no account was taken of the fact that with the passage of time and given the number and character of the applicant's acts of self-aggression in prison, it became more and more acutely obvious that keeping him in detention no longer served the purpose of bringing him to "trial within a reasonable time" (see paragraphs 17, 20-27, 29 and 32-33 above).

In the circumstances, the Court is of the opinion that the applicant's prolonged detention could not be considered "necessary" from the point of view of ensuring the due course of the proceedings.

85. The Court accordingly concludes that the reasons relied on by the courts in their decisions were not sufficient to justify the applicant's being held in custody for the period of three years and nearly ten months covered by the Court's jurisdiction *ratione temporis*.

There has therefore been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

86. The applicant further complained that the proceedings in which the Supreme Court had prolonged his detention beyond the statutory time-limit had not been conducted "speedily". He alleged a breach of Article 5 § 4 of the Convention, which provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Applicability of Article 5 § 4

87. The applicability of Article 5 § 4 to the proceedings in issue was not contested. The Court does not see any reason to hold otherwise: the Supreme Court, when prolonging the applicant's detention did not confine itself to setting out a mere framework within which the lower court was free to take a further decision (see paragraph 62 above). That court itself decided on the appropriateness and necessity of keeping the applicant in detention or releasing him and, as the Government maintained (see paragraph 90 *in fine* below), undertook a review of the conditions for the "lawfulness" of that measure set out by Polish law (see, *a contrario*, the Toth v. Austria judgment of 25 November 1991, Series A no. 224, p. 24, § 87).

B. Period to be taken into consideration

88. The Court observes that the parties agreed that the period in question started on 6 August 1996, when the Białystok Regional Court made an application under Article 222 § 4 of the Code of Criminal Procedure to the Supreme Court, and ended on 18 September 1996, when the relevant decision was served on the applicant (see also paragraphs 45-46 above). Accordingly, it lasted forty-three days.

C. Compliance with Article 5 § 4

89. The applicant asserted that that period had been excessive. He stressed that the only issue to be determined by the Supreme Court had been that of whether he had obstructed the proper course of his trial within the meaning of Article 222 § 4 of the Code of Criminal Procedure.

90. The Government, for their part, considered that, given the Supreme Court's excessive workload resulting from an accumulation of similar applications, it could not be said that the ruling on the lawfulness of the applicant's detention had been made with such a delay as to infringe Article 5 § 4.

In that respect, they also stressed that the authorities had foreseen the consequences of the amendments to the criminal legislation, in particular the introduction of provisions putting time-limits on pre-trial detention, and had significantly increased the number of the Supreme Court judges dealing with criminal cases. By 1 July 1996 the number of the judges of the Criminal Chamber had reached twenty. That showed that the Polish authorities had – with the requisite promptness – ensured that decisions on applications under Article 222 § 4 would be made "speedily".

The Supreme Court's ruling, the Government added, had not been limited to a mere finding whether or not the applicant had obstructed the termination of his trial but had also involved a determination of the question as to whether the charges against him had been sufficiently supported by evidence and whether holding him in detention had been necessary to ensure the proper conduct of the proceedings.

91. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

92. The finding whether or not the relevant decision was taken "speedily" within the meaning of that provision depends on the particular features of the case. In certain instances the complexity of medical – or other – issues involved in a determination of whether a person should be

detained or released can be a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements. That does not mean, however, that the complexity of a given dossier – even exceptional – absolves the national authorities from their essential obligation under this provision (see, *mutatis mutandis*, *Baranowski v. Poland* cited above, § 72; and *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

93. In the Court's view, there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending. The person concerned should benefit fully from the principle of the presumption of innocence, especially if – as in the instant case – pre-trial detention has already lasted for some four years (see paragraphs 1 and 45-46 above).

94. It is true that the period of forty-three days may prima facie appear not to be excessively long. Yet the court at only one instance made a decision in the applicant's case and at the time of that decision he had already spent in custody a period twice as long as the maximum term of pre-trial detention foreseen by Polish law (see paragraph 61 above).

Furthermore, the Government did not plead before the Court that complex issues had been involved in the determination of the lawfulness of the applicant's detention. The Court itself finds that it was not the case; indeed, the principal question examined by the Supreme Court was that of whether there were any exceptional, and exhaustively enumerated, legal grounds for the prolongation of pre-trial detention beyond the statutory time-limits laid down in Article 222 § 4.

In sum, the Court considers that the Polish authorities failed to decide "speedily" the lawfulness of the applicant's continued detention.

There has therefore been a violation of Article 5 § 4 of the Convention.

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

95. The applicant maintained, lastly, that his right to a "hearing within a reasonable time" had not been respected and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. Period to be taken into consideration

96. There was no dispute over the fact that the proceedings started on 21 May 1992, when the applicant was charged, and that they were terminated by the judgment of the Białystok Court of Appeal on

9 September 1997. The Court accordingly finds that the overall length of the proceedings was five years, three months and nineteen days.

However, given its jurisdiction *ratione temporis* (see paragraph 66 above), the Court can only consider the period of four years, four months and eight days which elapsed after 1 May 1993, although it will have regard to the stage reached in the proceedings on that date (see *Kudła v. Poland* cited above, § 123).

B. Reasonableness of the period in question

1. The arguments of the parties

97. The applicant considered that the authorities had – unjustifiably – shifted onto him the responsibility for the conduct of the trial and had overlooked the fact that his behaviour had markedly varied throughout the proceedings and that it had not been the main or the only reason why the proceedings had been prolonged.

He asserted that the authorities, not himself, had a duty to handle his case expeditiously but they had failed to do so. That had been particularly true in the period of some twenty-one months following 27 April 1995, during which the trial court had listed no hearing.

98. It could not be said, the applicant further contended, that the nature of the case had justified a delay of more than five years in determining the charges against him. The case had not been complex; this had been shown by the fact that once the trial had begun, it had taken the Regional Court a mere two months to terminate it.

99. To conclude, the applicant stressed that the fact that he had been kept in detention pending trial required of the courts "special diligence" in dealing with his case. Yet they had chosen to keep him in custody for several years despite the principle of the presumption of innocence and the desperately bad state of his health. That had prompted him to protest against such treatment by inflicting injuries on himself.

100. The Government acknowledged that the applicant's case had not been particularly complex. They considered, however, that the delay in the proceedings had been caused entirely by his own behaviour. They reiterated the arguments adduced by them in the context of the Article 5 § 3 complaint and recalled several instances of the applicant's acts of self-harm when in detention and his refusals to co-operate with doctors treating him in prison (see paragraphs 74-75 above).

101. The Government admitted that from 27 April 1995 to December 1996 the Regional Court had not held hearings. They however pointed out that it had not been possible for the court to set a date for trial because at the time the state of the applicant's health had been so bad that he could not be transferred from Barczewo Prison Hospital to Białystok Remand Centre.

The court had frequently asked the authorities of Barczewo Prison whether it had been possible to bring the applicant for trial but, from May 1995 to 16 July 1996, their answer had been negative.

In sum, the Government contended that there had been no significant periods of inactivity in the proceedings for which the judicial authorities could be held responsible and that, accordingly, there had been no violation of Article 6 § 1.

2. The Court's assessment

102. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities. On the latter point what is at stake for the applicant has also to be taken into account (see, among many other authorities, *Kudła v. Poland* cited above, § 124; and the Abdoella v. the Netherlands judgment of 25 November 1992, Series A no. 248-A, pp. 16-17, §§ 20 and 24 *in fine*).

The Court has also stressed on many occasions, in the context of Article 5 § 3, that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see the Abdoella judgment cited above).

103. In the instant case the Court observes at the outset that it was common ground that the applicant's case had not been a complex one (see paragraphs 98 and 100 above). It cannot thus be said that that factor had a bearing on the length of the proceedings.

The Court further notes that the Government attached much importance to the applicant's behaviour, in particular his repeated acts of self-harm, and considered that he had been responsible for the delay of the trial, whereas the applicant stressed that the judicial authorities had failed to display due diligence in handling his case.

104. The Court agrees that that the conduct of the applicant, although it had first and foremost been hazardous and destructive for his own health and well-being, had contributed to the length of his trial. His hunger-strike and the injuries he had then on several occasions inflicted on himself had resulted in his having been placed in prison hospitals and had – for a long time – made it difficult to bring him to trial (see paragraphs 14, 17, 21-27, 29-30, 32-33, 39 and 42).

However, the duty to administer justice expeditiously was incumbent on the national courts. The fact that the applicant was in custody required, as already mentioned, special diligence of them in handling his case. The courts were responsible for the manner in which the trial was organised and

they decided whether or not the applicant's continued detention was necessary to secure the proper conduct of the proceedings. In that context, their decisions to keep the applicant in detention despite the fact that – as the Court has already found – it did not serve the purposes of ensuring the progress of the trial (see paragraph 84 above) had the unavoidable effect of prolonging the proceedings.

Against the above background, even if the applicant's behaviour certainly played a role in delaying the determination of the charges against him, this cannot justify the overall length of the proceedings. In these circumstances and assessing all the relevant facts as a whole, the Court considers that the authorities failed to respect the applicant's right to have his case heard within a "reasonable time".

105. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. Under the head of pecuniary damage, the applicant claimed a sum of 10,000 Polish zlotys (PLN) for loss of earnings resulting from his lengthy detention.

The applicant further asked the Court to award him PLN 100,000 for moral distress and suffering caused by a violation of his Convention rights.

108. The Government considered that a finding of a violation of the Convention would in itself constitute sufficient and just satisfaction.

In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

109. The Court's conclusion, on the evidence before it, is that the applicant failed to show that the pecuniary damage pleaded was actually caused by his being held in custody for the relevant period. Consequently, it finds no justification for making an award to him under that head.

110. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of his detention and trial – which is not sufficiently compensated by the findings of violation of the Convention.

Making its assessment on an equitable basis, the Court awards the applicant PLN 25,000 under this head.

B. Costs and expenses

111. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of PLN 22,043 for costs and expenses incurred in the proceedings before the Court and the Commission.

112. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum.

113. Applying the criteria laid down in its case-law and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant PLN 15,000 for his costs and expenses together with any value-added tax that may be chargeable, less the 10,000 French Francs received by way of legal aid from the Council of Europe.

C. Default interest

114. 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 UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) 25,000 (twenty-five thousand) Polish zlotys in respect of non-pecuniary damage;

(ii) 15,000 (fifteen thousand) Polish zlotys in respect of costs and expenses, together with any value-added tax that may be chargeable, less 10,000 (ten thousand) French francs received by way of legal aid from the Council of Europe, to be converted into Polish zlotys at the rate applicable at the date of delivery of this judgment;

(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* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 21 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President