AS TO THE ADMISSIBILITY OF

Application No. 28358/95
by Janusz BARANOWSKI
against Poland

The European Commission of Human Rights sitting in private on 8 December 1997, the following members being present:

Mr S. TRECHSEL, President
Mrs G.H. THUNE
Mrs J. LIDDY
MM E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs M. HION
MM R. NICOLINI
A. ARABADJIEV

Mr M. de SALVIA, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 May 1994 by Janusz BARANOWSKI against Poland and registered on 29 August 1995 under file No. 28358/95;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 6 January and 26 August 1997 and the observations in reply submitted by the applicant on 20 February and 21 October 1997;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, a Polish citizen born in 1943, is an engineer residing in Lódz, Poland.

A. Particular circumstances of the case

On 2 June 1993 the Lódz Regional Prosecutor (Prokurator Wojewódzki) charged the applicant with fraud and detained him on remand.

On 25 June 1993 the Lódz Regional Court (S*d Wojewódzki), upon the applicant's appeal, upheld the detention order.

On 10 August 1993 the Lódz Regional Court, upon the prosecutor's request, prolonged the applicant's detention until 31 December 1993.

On 30 December 1993 the Lódz Regional Court, upon the request of the Lódz Regional Prosecutor, prolonged the applicant's detention on remand until 31 January 1994. On 7 January 1994 the applicant filed an appeal against the decision prolonging his detention.

On 11 January 1994 the Lódz Regional Prosecutor lodged a bill of indictment with the Lódz Regional Court.

On 21 January 1994 the Lódz Regional Court referred the applicant's appeal of 7 January 1994 to the Lódz Court of Appeal (S*d Apelacyjny).

On 1 February 1994 the Lódz Court of Appeal held that the examination of the applicant's appeal of 7 January 1994 "was purposeless" and decided that the appeal should be deemed to be a request for release. The court observed that the issue of decisions on the prolongation of detention on remand was necessary only at the investigative stage. Therefore, after the bill of indictment was lodged, the applicant could only at any time lodge a request for release with the court competent to deal with his case. As a result, the appeal was referred back to the Lódz Regional Court. The applicant was informed about this decision on 18 February 1994. However, the Lódz Regional Court examined the appeal in question neither as a request for release, nor in any other proceedings.

On 1 February 1994 the applicant filed a formal notification to the Lódz District Prosecutor (Prokurator Rejonowy). He informed the Prosecutor that the order for his detention had expired on 31 January 1994. He had appealed against this order but the court had failed to rule on his appeal.

On 7 February and 28 March 1994 the applicant lodged requests for release with the Lódz Regional Court.

On 16 and 25 February, 4 March, 8 and 18 April, 20 and 30 May, and 25 October 1994 the applicant requested the Lódz Regional Court to give an interpretation of the detention order of 30 December 1993, in particular whether the order in question had remained executory after its expiry. He submitted these requests under Section 14 of the Code of Execution of Criminal Sentences, arguing that the fact that the indictment had been lodged with the court did not automatically mean that his detention was to be maintained after 31 January 1994. He further submitted that no provision of the Code of Criminal Procedure provided that detention was prolonged as a result of the transfer of the case to the court. He asserted that the order of 30 December 1993 was not executory as he had filed an appeal against it. Therefore, he

should have been released immediately after 31 January 1994 as his detention as from this date lacked any legal basis.

On 16 February 1994, J.L., the Chief Judge of the Criminal Division of the Lódz Regional Court, sent the following letter to the applicant:

> "You are informed that since the bill of indictment had been submitted to the Lódz Regional Court, that court was competent to deal with any matters related to your case, including decisions on your detention. It is open to you to submit a request for release at any time and the court will then examine whether your detention should be continued. You will be released if the court grants such request. If the court refuses to do so, your detention will be continued until the judgment at first instance is pronounced. Therefore, your statement that your detention was unlawful since the order for your detention had expired on 31 January 1994 was erroneous."

On 24 May 1994 the Lódz Regional Court ruled on the applicant's requests for release dated 7 February and 28 March 1994 and held that no circumstances justified quashing or altering the preventive measure imposed. The decision was based on Sections 209 and 217 para. 1 (2) and (4) of the Code of Criminal Procedure. Apparently, before making this decision, the court had called the evidence from three medical experts to assess whether the applicant could be detained in view of his state of health. On 5 July 1994 the Lódz Court of Appeal, on the applicant's appeal, upheld the decision of the court of first instance.

On 9 August 1994 the applicant again requested the Lódz Regional Court to release him. The request was dismissed on 30 August 1994. Subsequently, on 9 September and 2 December 1994, and 4 April 1995 the Lódz Regional Court dismissed the further requests for release lodged by the applicant on unspecified dates.

On 21 December 1994 a single judge, sitting as the Lódz Regional Court, pronounced a decision on the applicant's requests submitted under Section 14 of the Code on Execution of Criminal Sentences, which had been filed by him between 16 February and 25 October 1994. The court declared that the decision of 30 December 1993 on the prolongation of the applicant's detention until 31 January 1994 was enforceable, even though the applicant had filed an appeal against it. The judge further reiterated the arguments contained in the letter to the applicant of 16 February 1994.

On 29 December 1994 the applicant appealed against this decision. He submitted that the court should have been composed of three judges in conformity with the relevant provisions of the Code of Criminal Procedure. He again submitted that there was no legal basis for maintaining his detention after 31 January 1994.

On 3 January 1995 a panel of three judges sitting as the Lódz Regional Court quashed the decision of 21 December 1994, finding that the Court should have been composed of three judges, as submitted by the applicant. However, it also held that Section 14 of the Code of Execution of Criminal Sentences was not applicable in the applicant's case since this provision applied to cases involving doubts concerning the execution of the sentence or the calculation of the penalty imposed.

On 10 January 1995 the applicant filed an appeal against this decision.

On 16 January 1995 the Chief Judge of the Criminal Division of the Lódz Regional Court gave an order refusing to allow the applicant's appeal on the basis that it was inadmissible in law. The applicant filed an appeal against this decision.

On 17 February 1995 the Lódz Regional Court confirmed the decision of 16 January 1995, considering that it had been open to the applicant to file an appeal against the decision of 21 December 1994, but a further appeal was inadmissible in law since Section 14 of the Code of Execution of Criminal Sentences did not apply to a detainee.

In a letter of 23 May 1995 the judge J.L., replying to the applicant's letter of 15 May 1995, stated as follows:

> "You are informed that the issue of the lawfulness of the penalty of detention on remand was already explained to you in detail in the letter of 16 February 1994 and the decision of 21 December 1994. As regards the above-mentioned issue, the circumstances of your case and the relevant law remain unchanged. Thus, the explanation previously given is still valid."

On 22 October 1996 the Lódz Regional Court quashed the order for detention and ordered the applicant to be released under police supervision.

The criminal proceedings against the applicant are pending before the court of first instance.

B. Relevant domestic law and practice

1. Detention on remand.

The Polish Code of Criminal Procedure lists as "preventive measures", inter alia, detention on remand, bail and police supervision. Until 4 August 1996 (i.e. the date on which a new Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes entered into force) a prosecutor was empowered to impose all preventive measures as long as the investigations lasted, whereas at present only a court may detain a suspect on remand. Also, the national law did not set out any statutory time-limits concerning the length of detention on remand as regards the proceedings before courts, but a prosecutor was obliged to determine in his decision the period for which detention was imposed.

Section 210 para. 1 of the Code of Criminal Procedure stated (in the version applicable at the material time):

> "Preventive measures shall be imposed by the court; before a bill of indictment has been lodged with the competent court, the measures shall be imposed by the prosecutor."

Section 213 para. 1 of the Code of Criminal Procedure provides:

> "1. A preventive measure (including detention on remand) shall be immediately quashed or altered, if the basis therefor has ceased to exist or new circumstances have arisen which justify quashing or replacing a given measure with a more or less severe one."

Section 217 subparas. 1 (2) and (4) (in the version applicable at the material time) provided:

> "1. Detention on remand may be imposed if:
>
> ...
>
> (2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the due course of proceedings by any other unlawful means;
>
> ...

(4) an accused has been charged with an offence which creates a serious danger to society."

There was (and still is) no specific provision governing detention on remand after the bill of indictment had been lodged with the competent court; however, at present, the courts are bound by the maximum statutory time-limits for which detention on remand can be imposed during the entire course of the proceedings. At the material time, according to domestic practice, once a bill of indictment had been lodged with the court competent to deal with the case, detention was assumed to be prolonged pending trial without any further judicial decision being given.

2. Bill of indictment.

Sections 295 and 296 of the Code of Criminal Procedure, referring to the formal requirements for a bill of indictment, state, inter alia, that it shall contain the first name and surname of the accused and information as to whether a preventive measure has been imposed on him, a statement of the offence with which he is charged, a detailed description of the facts of the case along with a statement of reasons for the accusation, an indication of the court competent to deal with the case and the evidence upon which the accusation is founded.

Once the bill of indictment has been lodged with the court, the president of the court carries out preparations for the main trial.

Section 299 para. 1 (6) of the Code of Criminal Procedure provides:

"1. The president of the court, ex officio or on the request of a party, shall refer the case to a court session if he finds that its resolution lies beyond his own competence, in particular:

...

(6) when there is a need to issue an order on a preventive measure."

At the material time, according to the relevant domestic practice, in respect of detention continuing after the last detention order had expired and after a bill of indictment had been lodged with a court, the courts did not make use of the procedure prescribed by the above-mentioned provision as it was presumed that the detention continued solely due to the fact that a bill of indictment had been lodged and, therefore, there was no need to issue a separate decision on the prolongation of the detention.

3. Proceedings relating to the lawfulness of detention on remand.

At the material time there were three different proceedings enabling a detainee to challenge the lawfulness of his detention: appeal to a court against a detention order made by a prosecutor, proceedings in which courts examined requests for prolongation of detention submitted by a prosecutor and proceedings relating to a detainee's request for release.

As regards the last of these, Section 214 of the Code of Criminal Procedure (in the version applicable at the material time) stated that an accused could at any time apply to have a preventive measure quashed or altered. Such an application had to be decided by the prosecutor or, after the bill of indictment had been lodged, by the court competent to deal with the case, within a period not exceeding three days.

4. Interpretation of enforceable decisions in criminal proceedings.

Section 14 of the Code of Execution of Criminal Sentences provides:

> "1. The authority executing a decision, as well as everyone whom such a decision concerns, may request the court which has dealt with the case to rule on any doubts concerning the execution of that decision or the calculation of the penalty imposed.
>
> 2. Everyone whom the decision on interpretation referred to in para. 1 concerns may appeal against such a decision."

According to Section 205 of the Code of Execution of Criminal Sentences, provisions of the Code referring to a "convict" are by analogy applicable to a "detainee". However, in the light of the domestic practice and legal theory it is doubtful whether Section 14 of the Code applies to cases in which a person detained on remand challenges the lawfulness of his detention since such a challenge is normally examined in the proceedings prescribed by the Code of Criminal Procedure (see above: 3. Proceedings relating to the lawfulness of detention on remand).

The proceedings relating to a request under Section 14 of the Code of Execution of Criminal Sentences are designed to secure a further interpretation of an enforceable decision which was not formulated in a precise manner. The court which is called upon to interpret the decision in question is not competent to amend or supplement its operative part (see the decision of the Supreme Court No. VI KRN 14/76, 2.3.76, published in OSNPG 1976/6/59). Accordingly, the person concerned cannot, by lodging a request under Section 14 of the Code, obtain his release.

5. Request for compensation for unjustified detention.

Chapter 50 of the Polish Code of Criminal Procedure, entitled "Compensation for unjustified conviction, detention on remand or arrest", provides that the State is liable for wrongful convictions or for unjustifiedly depriving an individual of his liberty in the course of criminal proceedings against him.

Section 487 of the Code of Criminal Procedure (as amended) provides, insofar as relevant:

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

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

Therefore, in practice, a request under Section 487 of the Code of Criminal Procedure cannot be lodged until the criminal proceedings against the person concerned have been terminated (see also the decision of the Supreme Court No. WRN 106/96, 9.1.96, published in Prok. i Pr. 1996/6/13). The court competent to deal with such a

request is obliged to establish whether the detention at issue was justified in the light of all the circumstances of the case, in particular whether the authorities considered all the factors militating in favour of or against the detention (see, inter alia, the decision of the Supreme Court No. II KRN 124/95, 13.10.95, published in OSNKW 1996/1-2/7) as a finding that the detention in question was "manifestly unjustified" is a pre-condition for awarding compensation.

As a consequence, the proceedings relating to a request under Section 487 of the Code of Criminal Procedure are subsequent to and independent of these original criminal proceedings in which the detention was imposed. They are not designed to secure release from detention but financial reparation for damage arising from the execution of unjustified detention on remand. The person concerned, by instituting such proceedings, can retrospectively seek a ruling as to whether his detention was justified. He cannot, however, test the lawfulness of his continuing detention on remand and obtain his release.

COMPLAINTS

1. The applicant complains under Article 5 para. 1 (c) of the Convention that his detention after 31 January 1994 lacked any legal basis. He submits that the authorities assumed that his detention was to be automatically maintained after the bill of indictment was submitted to the Lódz Regional Court, even though the law did not provide for this.

2. He further complains under Article 5 para. 4 of the Convention that he was unable to take proceedings by which the lawfulness of his continuing detention under the bill of indictment would be decided speedily by the courts.

3. Finally, the applicant submits that J.L. a judge of the Lódz Regional Court, in a letter of 23 May 1995, stated that a "penalty" of detention on remand had been imposed on the applicant. He complains that he had thereby been declared guilty before he had been tried or convicted.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 May 1994 and registered on 29 August 1995.

On 4 September 1996 the Commission decided to communicate the applicant's complaints submitted under Article 5 paras. 1 (c) and 4 of the Convention to the respondent Government and invite them to submit observations on these complaints.

The Government's written observations were submitted on 6 January 1997, after an extension of the time-limit fixed for that purpose. The applicant replied on 20 February 1997.

The translation of the Government's observations was submitted on 26 August 1997.

On 26 August 1997 the Government also submitted their additional observations. The applicant replied thereto on 21 October 1997. On 20 November 1997 the Govermnet responded to the applicant's reply.

THE LAW

1. The applicant complains under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention that his detention on remand after 31 January 1994 lacked any legal basis. He submits that the

authorities assumed that his detention was to be automatically maintained after the bill of indictment was submitted to the Lódz Regional Court, even though the law did not provide for this.

Article 5 para. 1 (Art. 5-1), insofar as relevant, provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

a) Under Article 26 (Art. 26) of the Convention, "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

The Government submit that the applicant has not complied with the requirements of Article 26 (Art. 26) of the Convention since he has not submitted, to a competent court, a request under Section 487 of the Polish Code of Criminal Procedure for compensation for manifestly unjustified detention on remand. They maintain that, in the light of the jurisprudence of the Polish Supreme Court, this is an effective domestic remedy enabling the person concerned to obtain a review of the lawfulness of his detention on remand and, finally, financial reparation where his detention has been proved unjustified.

The applicant replies that lodging a request under Section 487 of the Code of Criminal Procedure would not result in remedying his situation. First of all, such a request may be submitted on the condition that a final decision giving rise to compensation has already been given, whereas in his case the authorities failed to issue any decision as to the prolongation of his detention after 31 January 1994. Secondly, on 7 February 1994, he requested the Lódz Regional Court to release him and, on 16 February 1994, requested that court to give an interpretation of the detention order of 30 December 1993. These were the only domestic channels through which he could test the lawfulness of his detention.

The Commission recalls that, as it has repeatedly stated, under Article 26 (Art. 26) of the Convention an applicant must make normal use of remedies likely to be effective and adequate. It further reiterates that where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be exhausted because the right to obtain release from detention and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 (Art. 5) are two separate rights (see No. 12747/87, Dec. 12.12.89, D.R. 64, pp. 97, 124).

According to Polish law and practice, a request for compensation for manifestly unjustified detention on remand under Section 487 of the Code of Criminal Procedure enables a detainee to seek, retrospectively, a ruling as to whether his detention in already-terminated criminal proceedings was justified, and to obtain compensation when it was not. The proceedings relating to such a request are designed to secure financial reparation for damage arising from the execution of unjustified detention on remand. As a consequence, this is not a remedy by which a detainee may challenge the lawfulness of his continuing detention on remand and obtain his release.

In the present case the Government have not provided the Commission with any clear example from domestic practice capable of justifying a different conclusion. Accordingly, the Commission

considers that this complaint cannot be rejected for non-exhaustion of domestic remedies.

b) The Government submit that in any event the complaint is manifestly ill-founded. Thus, the Polish Code of Criminal Procedure (in the version applicable at the material time) did not oblige the court competent to deal with the case to give any further decision as to maintaining detention after a bill of indictment has been lodged with that court. Nor did the Code lay down any specific provision according to which the court was obliged to prolong the period of the applicant's detention after the previous detention order had expired.

The applicant replies that, according to Section 299 para. 1 (6) of the Polish Code of Criminal Procedure, the president of the court, who carries out the preparations for the main trial after a bill of indictment has been lodged, shall - ex officio or on the parties' request - refer the case to a court session if there is a need to issue an order on a preventive measure such as detention on remand. It follows that in the present case the court competent to deal with his case was obliged to give a decision determining whether his detention should be maintained after 31 January 1994, i.e. the date on which the last detention order expired.

In this respect the Government submit that the Lódz Regional Court was not obliged to hold a session under Section 299 para. 1 of the Code of Criminal Procedure, since it was, in general, not obliged to prolong detention ordered in the course of the investigations. Nevertheless, the court was obliged under Section 213 of the Code of Criminal Procedure, constantly to review the lawfulness of the applicant's detention on remand. In the present case, as from 11 January 1994, i.e. the date on which the bill of indictment was lodged, the Lódz Provincial Court constantly examined the legal basis for the applicant's detention. In particular, the applicant himself lodged on 7 February and 28 March 1994 requests for release, which were dismissed on 24 May 1994 at first instance and on 5 July 1994 on appeal. On these occasions the courts reviewed the reasons militating in favour and against the applicant's detention. As a result, the authorities carried a consequent and fair review of the lawfulness of his detention.

The applicant contends that the notions of "reasonableness" and "lawfulness" of his detention should be separated. He admits that he did not complain about the fact that his requests for release had been consistently dismissed but about the fact that his detention had been maintained after 31 January 1994 without an adequate judicial decision being given. When he requested the courts to release him after this date, they reviewed only the reasonableness of his detention, because they presumed that the lodging of the bill of indictment with the court had "automatically" resulted in providing a sufficient legal basis for further detention.

The Government conclude that the applicant's detention after 31 January 1994 was "lawful" within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention. It was maintained in accordance with domestic law, in particular Sections 209, 217 subparas. 1 (2) and (4) of the Code of Criminal Procedure and was not arbitrary. In addition, the relevant provisions of Polish law, in particular the Code of Criminal Procedure, governing detention on remand after a bill of indictment is lodged with the competent court, comply with the requirements set out for national law in the Convention organs' case-law as regards their accessibility and predictability. The applicant's detention was ordered for justified reasons. Finally, it cannot be said that the relevant domestic law fails to protect an individual from arbitrariness on the part of the public authorities.

The applicant contests these submissions, asserting that the Polish authorities clearly violated provisions of domestic law (inter

alia, Section 214 of the Code of Criminal Procedure and Sections 14 and 205 of the Code of Execution of Criminal Sentences), in view of the fact that they neither gave a prompt decision on the prolongation of his detention after 31 January 1994, nor examined his requests to interpret the detention order of 30 December 1993. Therefore, the authorities abused their powers by refusing to release him after 31 January 1994.

After a preliminary examination of the present complaint in the light of the parties' submissions, the Commission considers that it raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. This complaint cannot, therefore, be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for inadmissibility have been established.

2. The applicant also complains under Article 5 para. 4 (Art. 5-4) of the Convention that he was unable to take proceedings by which the lawfulness of his continuing detention under the bill of indictment would be decided speedily by the courts.

Article 5 para. 4 (Art. 5-4) of the Convention provides:

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

The Government submit that after 31 January 1994, i.e. when the detention order expired, the applicant could, according to Section 214 of the Code of Criminal Procedure, lodge at any time a request for release, which he did. It is true that his requests for release lodged on 7 February 1994 and 28 March 1994 were dismissed on 24 May 1994 at first instance and on 5 July 1994 on appeal. However, in the meantime the courts had called medical experts to assess whether the applicant could be detained in view of his state of health. Therefore, even if the applicant's requests submitted under Section 14 of the Code of Execution of Criminal Sentences between 16 February and 25 October 1994 were not examined by the Lódz Regional Court until 21 December 1994, it cannot be said that this was the first examination of the lawfulness of the applicant's detention. On the contrary, as early as on 1 February 1994 the Lódz Court of Appeal ruled that the applicant's appeal of 7 January 1994 should be deemed to be a request for release. This was a simple consequence of the fact that decisions on prolongation of detention on remand were made by courts only during the investigative stage. The appeal in question could be examined only at the pre-trial stage of the proceedings. Thus, the proceedings relating to the lawfulness of the applicant's detention were conducted without unnecessary delay. Accordingly, in this respect no issue arises under Article 5 para. 4 (Art. 5-4) of the Convention.

The applicant maintains, first, that the examination of his requests for release could not be substituted for the examination of his appeal of 7 January 1994 and his requests to interpret the detention order of 30 December 1993 submitted under Section 14 of the Code of Execution of Criminal Sentences. Secondly, he asserts that on 1 February 1994 the Lódz Court of Appeal went beyond its discretion and in fact refused to examine his appeal, referring it back to the Lódz Regional Court as a request for release. It cannot, therefore, be said that the Lódz Court of Appeal examined the lawfulness of his detention. Thirdly, this decision was given on the date on which the detention order had already expired and was, therefore, late. Fourthly, the decisions on his requests for release of 7 February and 28 March 1994 were not given within the statutory time-limit of three days set out in Section 214 of the Code of Criminal Procedure but only after a lapse of several months. Therefore, the authorities did not comply with the

requirements of Article 5 para. 4 (Art. 5-4) of the Convention.

In respect of the applicant's requests submitted under Section 14 of the Code of Execution of Criminal Sentences, the Government contend that the courts, even if they refused to allow the applicant's appeal, displayed necessary diligence in the examination thereof. However, in the light of domestic law, legal theory and practice it is doubtful whether the applicant was entitled to have recourse to such proceedings. Thus, no issue arises under Article 5 para. 4 (Art. 5-4) of the Convention in this respect either.

The applicant replies that his requests under Section 14 of the Code of Execution of Criminal Sentences could constitute a remedy enabling him to challenge the lawfulness of his detention after the order for his detention had expired, provided the courts examined them speedily. However, they failed to do so: the first request was submitted on 16 February 1994 and examined only on 21 December 1994, i.e. after a lapse of more than ten months. In addition, he was not allowed to appeal against the decision of the Lódz Regional Court of 3 January 1995. Therefore, in this respect he was deprived of his right to take proceedings by which the lawfulness of his detention would be speedily decided after the bill of indictment had been lodged with the court.

Having examined this complaint the Commission finds that it raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This part of the application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other ground for declaring it inadmissible has been established.

3. The applicant also complains that J.L., a judge of the Lódz Regional Court, in his letter of 23 May 1995, stated that a "penalty of detention on remand had been imposed on the applicant". He complains that he had thereby been declared guilty before he had been tried or convicted.

This complaint, which also concerns the alleged lack of impartiality of a judge, falls within the scope of both paras. 1 and 2 of Article 6 (Art. 6-1, 6-2) of the Convention, which, insofar as relevant, read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Commission notes that, on the one hand, the contested letter related to the imposition of a preventive measure (i.e. detention on remand) on the applicant. In it, judge J.L. also referred to a previous letter of 16 February 1994 which had explained certain procedures relating to the applicant's detention on remand.

In the Commission's view, it does not transpire from these letters that the judge was in any way biased in that he had a preconceived opinion on the applicant or his case. Nor does it appear that the views expressed in the letter breached the presumption of innocence guaranteed under para. 2 of Article 6 (Art. 6-2). Furthermore, the criminal proceedings against the applicant are still pending. The Commission cannot, therefore, speculate as to how his trial will continue, in particular whether the applicant will be acquitted or convicted and on what basis the courts concerned will reach their final decision in his case.

It follows that the remainder of the application is inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint that his detention on remand was unlawful and the complaint about the conduct of the proceedings relating to the lawfulness of his continuing detention under the bill of indictment after the detention order of 30 December 1993 expired;

DECLARES INADMISSIBLE the remainder of the application.

M. de SALVIA Secretary to the Commission	S. TRECHSEL President of the Commission