AS TO THE ADMISSIBILITY OF

Application No. 26171/95
by Piotr BUDA
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 16 May 1994 by Piotr BUDA against Poland and registered on 10 January 1995 under file No. 26171/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1963, is a mechanic currently serving his prison sentence in the D*bica prison.

The facts of the case, as submitted by the applicant, may be summarised as follows:

Particular circumstances of the case

In August 1992, on an unspecified date, the Kraków-Krowodrza District Prosecutor (Prokurator Rejonowy) charged the applicant with fraud and detained him on remand.

After a lapse of eleven days the applicant was released on bail.

On 23 December 1992 the Kraków-Sródmiescie District Prosecutor (Prokurator Rejonowy) charged the applicant with two counts of burglary committed on 16 and 17 December 1992 and detained him on remand.

On 14 June 1993, on the request of the Public Prosecutor's Office, the Kraków-Sródmiescie District Court (S*d Rejonowy), prolonged the applicant's detention until 11 September 1993 in view of the

reasonable suspicion that the applicant had committed the offences at issue, the fact that he had acted in an organised group and that the investigations were not yet complete as it was necessary to make additional inquiries and to obtain the fingerprint and mechanics experts' reports.

On 29 June 1993, upon the applicant's appeal, the Kraków Provincial Court (S*d Wojewódzki) upheld the decision of 14 June 1993 and the grounds given therefor to justify the detention.

In the meantime, on an unspecified date, the Kraków-Krowodrza District Prosecutor sent a bill of indictment to the Kraków-Krowodrza District Court. The applicant was accused of having committed twenty-one counts of fraud against private persons and three counts of fraud against public companies, illegally selling goods seized in enforcement proceedings, and obtaining a certificate of untruth by false pretences.

On 12 July and 3 August 1993 the applicant requested the Kraków-Sródmiescie District Prosecutor to quash the detention order. He argued that in the meantime the Kraków-Krowodrza District Prosecutor had completed the investigations in the fraud case and had sent the bill of indictment to the Kraków-Krowodrza District Court. He asserted that the case in question was complex and he had to be released to prepare his defence properly. He also submitted that his detention had entailed excessively burdensome effects for his family.

On 3 August 1993 this request was dismissed on the grounds of the risk of collusion, the seriousness of the offences in question, the continuing inquiries which indicated that new charges against the applicant were likely to be brought, and as no particular family circumstances argued for release.

On 19 August 1993, upon the applicant's appeal, the Kraków Provincial Prosecutor (Prokurator Wojewódzki) upheld the decision of 3 August 1993 in view of the numerous charges brought against the applicant and his co-suspects, the fact that the offences in question were committed within the area of three provinces and the persisting risk of collusion resulting from the contradictory statements of co-suspects and witnesses involved in the investigations. It was also noted that the fact that the applicant was accused in the other criminal proceedings was not an argument for releasing him; on the contrary, it justified continuing the detention as some of the new offences had been committed after the applicant had been released on bail.

On 8 September 1993, upon the Public Prosecutor's Office's request, the Kraków Provincial Court prolonged the applicant's detention until 18 December 1993 in view of the continuing suspicion that the applicant had committed the offences at issue, the seriousness of the offences, the risk of collusion, the previous criminal record of the applicant and the need to make additional inquiries in the course of the investigations.

On 29 September 1993, upon the applicant's appeal, the Kraków Court of Appeal (Sad Apelacyjny) upheld the decision of 8 September 1993 and the grounds given therefor. The Court also stated that the evidence already presented gave sufficient reasons to assume that the applicant had committed an offence.

On 11 October 1993 the applicant's trial concerning charges of fraud commenced before the Kraków-Krowodrza District Court.

On 10 December 1993 the bill of indictment in the burglary case was lodged with the Kraków Provincial Court. The bill of indictment comprised charges concerning forty-one counts of burglary committed in an organised group, several charges of selling stolen goods and forgery. The applicant was indicted of fourteen counts of burglary and

of the forgery of a document. More than sixty witnesses and nine co-defendants were involved in the case. The case-file comprised fifty-four volumes. On the same day the applicant requested the court to release him, to remand the case for further investigations and to discontinue the criminal proceedings against him.

On 22 December 1993 the Kraków Provincial Court dismissed all the applicant's requests and referred to the previous grounds for detention, in particular, to his criminal record and the commission of offences in an organised group as well as to the fact that no circumstances argued for his release. The court decided that the trial would be held, though no specific date was scheduled.

On 22 and 27 December 1993 and 17 January 1994 the hearings in the fraud case took place before the Kraków-Krowodrza District Court.

On 9 February 1994, upon the applicant's appeal, the Kraków Court of Appeal upheld the decision of 22 December 1993 and found that all grounds given for the applicant's detention were sufficient. In addition the court found that the need to ensure the proper conduct of the proceedings argued for the applicant's detention notwithstanding that it entailed burdensome effects on his family, as such effects are inherent in detention. On 10 February, 2 and 4 March 1994 the hearings in the fraud case took place before the Kraków-Krowodrza District Court.

On 4 March 1994 the Kraków-Krowodrza District Court convicted the applicant on all twenty-four counts of fraud and the other offences he was accused of. He was sentenced to a cumulative penalty of five years' imprisonment and a fine of 150 million old PLZ.

Hearings in the burglary case were scheduled for 22 and 23 March 1994. The first hearing was adjourned as one of the co-defendants failed to appear. In the course of the second hearing the applicant requested to be released. On the same day the court dismissed his request.

On 27 April 1994, upon the applicant's appeal, the Kraków Court of Appeal upheld the decision of 23 March 1994 and referred to the grounds for detention given in the previous decisions.

On 11 May 1994 the applicant complained to the Minister of Justice about the unreasonable length of his detention and the criminal proceedings in the burglary case. On an unspecified date the complaint was transferred to the Chief Justice of the Kraków Court of Appeal.

On 20 May 1994 the applicant requested the Kraków Provincial Court to release him. He argued, first, that there was no sufficient evidence of his guilt. He also submitted that his family situation was alarming due to the fact that his father-in-law had died, that his stepdaughter had had a miscarriage, that his wife and three children had critical financial problems and that his release was necessary for the family's well-being.

On 26 and 27 May 1994, hearings in the burglary case took place before the Kraków Provincial Court. The next hearings were scheduled for 11 and 12 July 1994.

On 7 June 1994 the Chief Justice of the Kraków Court of Appeal replied to the applicant's complaint of 11 May 1994 and found that there was no reason to interfere with the decisions given by the Kraków Provincial Court in the course of the trial.

On 8 June 1994 the Kraków Provincial Court dismissed the applicant's request of 20 May 1994 in view of the fact that existing evidence confirmed that the applicant had committed the offences in question and that the serious nature of these offences and their

number, as well as the fact that the applicant had a previous criminal record, still argued for his detention. In respect of his allegedly tragic family situation the court found that this situation was in fact a serious one but that in the past the applicant had not contributed much to the well-being of his family.

On 22 June 1994, upon the applicant's appeal, the Kraków Provincial Court upheld the judgment of the Kraków-Krowodrza District Court of 4 March 1994.

On 7 July 1994, upon the applicant's appeal, the Kraków Court of Appeal upheld the decision of 8 June 1994 and again referred to reasons previously given to justify the detention. The court also held that it had been premature to declare that the evidence showed that the applicant was guilty, though there was sufficient evidence to justify the detention on remand. With regard to the family situation the court pointed out that isolation from family was inherent in detention, which normally entailed burdensome effects for the family but that in the applicant's case these effects were not particularly severe.

On 11 and 12 July 1994 the next hearings in the burglary case took place. The applicant again unsuccessfully applied for release.

On 20 July 1994 the applicant complained to the Minister of Justice about the length of his detention. On an unspecified date the complaint was transferred to the Chief Justice of the Kraków Court of Appeal.

On 21 July 1994 the applicant commenced serving his sentence following his final conviction for fraud.

On 17 August 1994, upon the applicant's appeal, the Kraków Court of Appeal upheld the decision of 12 July 1994. The court made reference to the grounds formerly used to justify the detention and again assessed the applicant's family situation. The court weighed the interest of the proper conduct of the proceedings against that of the family and concluded that, as the local Social Welfare Office was taking the necessary steps to support the applicant's family, no particular circumstances argued for the applicant's release.

On 31 August 1994 the Chief Justice of the Kraków Court of Appeal replied to the applicant's complaint of 20 July 1994, observing that the competent court enjoyed independence in any decision concerning the trial.

On 15 and 16 September 1994 the next hearings in the burglary case took place. The applicant again requested to be released. He relied on his difficult family circumstances and asserted that the indications of his guilt were questionable. He argued that detention on remand was unnecessary as on 21 July 1994 he had commenced serving the prison sentence imposed on him in the fraud case. He invoked Article 5 and Article 6 of the Convention. On the same day his request was dismissed in view of the fact that the grounds for his continuing detention had not ceased to exist.

On 21 September 1994 the applicant wrote to the Chief Justice of the Kraków Court of Appeal complaining about the length of his detention and the conduct of the proceedings. He invoked Articles 5 para. 3 and 6 para. 1 of the Convention.

On 28 September 1994, upon the applicant's appeal, the Kraków Court of Appeal upheld the decision of 16 September 1994 and referred to the grounds given by the courts as from 8 September 1993, which still persisted.

On 24 October 1994 the Chief Justice of the Kraków Court of Appeal replied to the applicant's complaint of 21 September 1994 and concluded that the length of his detention and the manner in which the

proceedings were being conducted were due to the complexity of the case. She also made reference to the numerous charges brought against the applicant and his co-defendants, to the fact that the evidence was voluminous and to the fact that in one instance the hearing had been adjourned due to the absence of one of the co-defendants.

On 3 and 4 November 1994 the subsequent hearings took place. The court commenced examining the last witnesses.

In December 1994, on an unspecified date, the applicant and his defence counsel requested the court to quash the detention order. Their requests were dismissed on 16 and 19 December 1994, respectively. The court referred to grounds justifying the detention which had been given in its previous decisions. It was also stressed that, in view of the complexity of the case, the proceedings in question had reached a final stage in reasonable time and would be terminated after the next hearings which had been scheduled for 27 and 28 December 1994.

In the meantime the applicant applied to the Kraków Provincial Court Penitentiary Division to release him on probation.

On 22 December 1994 his application was dismissed as it was noted that though the applicant was serving the prison sentence imposed as a result of his earlier conviction for fraud, he was concurrently detained on remand in the case pending before the Kraków Provincial Court, which excluded his release on probation.

The subsequent hearings were to take place on 27 and 28 December 1994. However, due to the absence of one of the jurors, they were adjourned until 27 and 28 February 1995.

On 3 January 1995 the applicant complained to the Chief Justice of the Kraków Court of Appeal about the unreasonable length of his detention and the length of the proceedings before the court.

On 11 January 1995, upon the applicant's and his lawyer's appeals, the Kraków Court of Appeal upheld the decisions of 16 and 19 December 1994 in view of the manifold and serious nature of the charges brought against the applicant and his co-accused. The court referred to the fact that prolonged detention had entailed burdensome effects on the applicant's family; however, it also stressed that those effects were not sufficiently extreme and that the applicant's conduct before his detention had substantially contributed to the current situation of his wife and children.

On 13 January 1995 the Chief Justice of the Kraków Court of Appeal replied to the applicant's complaint of 3 January 1995 and stated that the reason why the next hearings were scheduled only for 27 and 28 February 1995 was that a psychiatric expert's report had to be obtained and that the case-file had been sent to the Kraków Court of Appeal in order for it to examine the applicant's and his lawyer's appeals against the decisions of 16 and 19 December 1994.

On 27 and 28 February 1995 the last hearings and final submissions of the parties took place. In the course of the hearing held on 28 February 1995 the applicant again unsuccessfully requested to be released. On the same day the Kraków Provincial Court convicted the applicant of twelve counts of burglary committed in an organised group and sentenced him to four years and six months' imprisonment and a fine of 1,000 new PLZ.

On 23 March 1995, upon the applicant's appeal against the decision of 28 February 1995, the Kraków Court of Appeal quashed the order for detention and ordered the applicant to be released under police supervision. In fact, the applicant was not released due to the fact that as from 21 July 1994 he had been serving a prison sentence following his earlier conviction.

On 30 May 1995 the applicant filed a memorial addressed to the Kraków Court of Appeal in which he supplemented the appeal made by his lawyer and submitted, inter alia, that certain witnesses for his defence had not been called. However, the applicant neither specified the names of these witnesses nor adduced circumstances or facts which might have been revealed by their testimony. The applicant did not request permission to address the court or to be brought to the appeal hearing.

On 29 November 1995, following the appeal hearing, the Kraków Court of Appeal upheld the judgment of the court of first instance and discontinued the proceedings in relation to one of the co-accused who had died in the meantime. The applicant did not take part in the appeal hearing though he was represented by his lawyer.

Meanwhile, on an unspecified date, the applicant applied to the Kraków Provincial Court to render a combined judgment concerning the penalties imposed on him in both sets of criminal proceedings. On 26 February 1996 the court sentenced the applicant to the cumulative penalty of seven years and six months' imprisonment and the cumulative fine of 15,000 new PLZ. On 18 July 1996, upon the applicant's appeal, the Krakow Court of Appeal upheld the combined judgment of the court of first instance.

Relevant domestic law and practice

The Polish Code of Criminal Procedure lays down specific rules concerning obligatory legal assistance in proceedings before a provincial court sitting as a court of first instance.

Section 71 of the Code of Criminal Procedure provided (in the version applicable at the material time):

> "The accused must have a defence counsel in proceedings before a provincial court sitting as a court of first instance. The participation of a defence counsel in the trial is mandatory ..."

Section 400 paras. 1 and 2 of the Code of Criminal Procedure provided:

> "1. The failure of any party, other than the prosecutor, to appear, shall not stay the hearing of a case at an appellate trial. Section ... 71 shall be applied.
>
> 2. Even if there is no confirmation that a party to the proceedings has been notified of the appellate hearing, this shall not stay the hearing of the case, provided that the defence counsel and/or the attorney of the injured party are present."

The presence of an accused in detention before the appellate court is discretionary. In practice, the accused must apply to the appellate court to be brought to the hearing.

Section 401 of the Code of Criminal Procedure provides:

> "If the appellate trial has been set, the court may rule that an accused in detention shall be brought to the hearing."

COMPLAINTS

1. The applicant complains, first, under Article 5 para. 3 of the Convention that he was neither tried within a reasonable time nor released pending trial, that his detention on remand lasted an unreasonably long time as from 14 June 1993, when the Kraków-Sródmiescie District Court decided to prolong his detention on remand, and that it lacked justified grounds.

2. The applicant also raises various complaints under Article 6 paras. 1 , 2 and 3 (b), (c) and (d) of the Convention:

a) he complains that the criminal proceedings before the courts in the burglary case, which commenced on 10 December 1993, were unreasonably long;

b) he complains that the courts presumed his guilt when they decided on his detention;

c) he complains that on account of the length of his detention in the burglary case he was not able to prepare his defence and to defend himself in the fraud case;

d) he complains that he was not summoned and brought to the appeal hearing before the Krakow Court of Appeal and as a result he could not defend himself; and

e) he complains that on account of his prolonged detention he was not able to call defence witnesses as it was not possible to contact them or to find out their whereabouts.

3. The applicant further complains under Article 13 of the Convention that he had no effective domestic remedy against violations of his rights guaranteed by Articles 5 and 6 of the Convention.

4. Finally, the applicant complains under Article 14 of the Convention that he was deprived of his liberty on the discriminatory ground of his previous criminal record.

THE LAW

1. The applicant complains under Article 5 para. 3 (Art. 5-3) of the Convention that he was neither tried within a reasonable time nor released pending trial, that his detention on remand as from 14 June 1993 lasted an unreasonably long time and that it lacked justified grounds.

Article 5 para. 3 (Art. 5-3) of the Convention, insofar as relevant, provides as follows:

> "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."

While the applicant complains in particular of the period after 14 June 1993, under Article 5 para. 3 (Art. 5-3) of the Convention, the Commission is called upon to examine the entire period of his detention on remand.

Thus, the applicant's detention on remand commenced on 23 December 1992 and lasted until 23 March 1995 when the order for detention was quashed. However, the Commission is competent ratione temporis to examine the applicant's complaints insofar as they relate to the proceedings as from 1 May 1993, which is the date on which Poland's declaration acknowledging the right of individual petition took effect. Moreover, as from 21 July 1994 the applicant was serving a prison sentence on account of his conviction of fraud. The period of detention on remand to be examined under Article 5 para. 3 (Art. 5-3) of the Convention must be therefore calculated from 1 May 1993 until 21 July 1994. Accordingly, it lasted one year, two months and twenty days.

In the light of the Convention organs' case-law, the Commission must first examine the reasons given to justify the applicant's detention on remand in the decisions on applications for release.

Secondly, it must examine whether the authorities displayed the necessary special diligence in the conduct of the proceedings (see, inter alia, Eur. Court HR, Toth v. Austria judgment of 12 December 1991, Series A, no. 224, p. 18, para. 67; Van der Tang v. Spain judgment of 13 July 1995, Series A, no. 321, p. 17, para. 55).

In the present case the domestic authorities, in their decisions relating to the applicant's requests for release, found that there was a serious suspicion that he had committed numerous offences of burglary. The subsequent inquiries resulted in the applicant, who was initially suspected of two offences of burglary, eventually being indicted of fourteen counts of burglary and forgery (see, in particular, the decision of the Kraków-Śródmiescie District Prosecutor of 3 August 1993, the decisions of the Kraków Provincial Court of 22 December 1993 and 8 June 1994).

Moreover, the domestic authorities assumed that the proper conduct of the proceedings and the need to obtain the experts' reports warranted the continuing detention (see, in particular, the decision of the Kraków-Śródmiescie District Court of 14 June 1993 and the decision of the Kraków Court of Appeal of 9 February 1994).

Finally, in view of the contradictory statements of witnesses and co-suspects, the national authorities considered that in the applicant's case there also existed a risk of collusion (see the decision of the Kraków-Śródmiescie District Prosecutor of 3 August 1993, the decision of the Kraków Provincial Prosecutor of 19 August 1993 and the decision of the Kraków Provincial Court of 8 September 1993).

The Commission finds that the authorities could reasonably conclude that there was a reasonable suspicion that the applicant had committed the offences in question, that there was a risk of collusion and that there was a need to ensure the proper conduct of proceedings in view of the number of charges brought against several co-suspects.

As regards the "special diligence" required in the conduct of cases of detention on remand, the Commission notes that the investigations commenced on 23 December 1992 and ended on 10 December 1993 when the bill of indictment was lodged with the court. Thus, they lasted eleven months and 17 days. They resulted in obtaining evidence contained in fifty-four volumes of the case-file. The trial commenced on 22 March 1994 when the first hearing was held. The next hearings took place at intervals of at the most two months (26-27 May, 11-12 July 1994).

In view of the complexity and volume of the case, the Commission does not consider that the Polish authorities failed to act with the necessary diligence in the conduct of the proceedings.

Finally, the Commission notes that between June 1993 and 21 July 1994 the applicant lodged numerous requests, appeals and complaints which related to his detention. However, the Commission considers that the number and the object of the applicant's requests and other petitions do not appear to be excessive and the length of the applicant's detention on remand cannot therefore be imputed to his behaviour.

Making an overall assessment, the Commission considers that the period of the applicant's detention did not exceed what can be considered a reasonable time within the meaning of Article 5 para. 3 (Art. 5-3) of the Convention.

This part of application is, therefore, manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 6 para. 1 (Art. 6-1) of the

Convention that the criminal proceedings before the courts in the burglary case, which commenced on 10 December 1993, were unreasonably long.

Article 6 para. 1 (Art. 6-1), insofar as relevant, provides:

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

The Commission recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Convention organs' case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, inter alia, Eur. Court HR, Vernillo v. France judgment of 20 February 1991, Series A, no. 198, p. 12, para. 30).

While the applicant complains in particular about the length of the proceedings before the courts, the Commission observes that the criminal proceedings in question commenced already on 23 December 1992, when charges were brought against the applicant. They ended on 29 November 1995, i.e. the date of the final judgment of the Krakow Court of Appeal. However, the Commission, by reason of its competence ratione temporis, can only examine the applicant's complaints insofar as they relate to the proceedings as from 1 May 1993, the date on which Poland's declaration acknowledging the right of individual petition took effect. Nevertheless, the Commission can take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration (No. 7984/77, Dec.11.7.79, D.R. 16 p. 92). Thus, the period to be examined under Article 6 para. 1 (Art. 6-1) of the Convention must be calculated from 1 May 1993 until 29 November 1995. Accordingly, it lasted two years, six months and twenty-eight days.

The Commission has already found that the applicant's case was a complex one. Moreover, in respect of the period concerning the applicant's detention until 21 July 1994, the Commission has also found that domestic authorities did not fail to act with the necessary diligence in the conduct of the proceedings.

As regards the period after this date, the Commission notes that the trial concerning charges of burglary lasted before the Kraków Provincial Court until 28 February 1995 and that the appeal hearing before the Kraków Court of Appeal took place on 29 November 1995. Meanwhile, the court of first instance held six hearings They took place on 15-16 September, 3-4 November, 27-28 December 1994, 27-28, February 1995, respectively. Many of the total number of sixty-four witnesses were heard, three experts' reports were examined and numerous documents comprised in the case-file were considered. In the meantime, the applicant lodged three requests for release, four appeals against the decisions on detention and three complaints against the length of his detention and the conduct of the trial.

It follows that also after 21 July 1994 the authorities duly pursued the case. Furthermore, the Commission cannot find from the information submitted by the applicant that his conduct caused any undue delays in the course of the proceedings complained of.

This part of application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains under Article 6 para. 2 (Art. 6-2) of the Convention that the courts presumed his guilt when they decided on his detention.

Article 6 para. 2 (Art. 6-2) of the Convention provides:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Commission notes that the national authorities in their decisions on the applicant's detention referred to a reasonable suspicion that he had committed the offences in question. However, there is no indication that in the course of the proceedings the authorities in fact considered the applicant as having committed a criminal offence.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further complains under Article 6 para. 3 (b) (Art. 6-3-b) of the Convention that on account of the length of his detention in the burglary case he was not able to prepare his defence and to defend himself in the fraud case.

Article 6 para. 3 (b) (Art. 6-3-b) provides:

"3. Everyone charged with a criminal offence has the following minimum rights:
...
(b) to have adequate time and facilities for the preparation of his defence."

The Commission notes that the applicant has not given any concrete indications as to how his detention on remand in the burglary case unduly hindered the preparation of his defence in the fraud case.

In any event, the Commission observes that as from 11 October 1993 until 4 March 1994 the applicant's trial concerning charges of fraud took place before the Kraków-Krowodrza District Court and that on 22 June 1994 the appeal hearing was held before the Kraków Provincial Court. The trial concerning charges of burglary commenced on 22 March 1994 before the Kraków Provincial Court. Thus, there were no substantial concurring periods of the different trial proceedings which might have hindered the applicant in preparing his defence in the two sets of criminal proceedings instituted against him.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant complains under Article 6 para. 3 (c) (Art. 6-3-c) of the Convention that he was not summoned and brought to the appeal hearing before the Kraków Court of Appeal and that as a result he could not defend himself.

Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, insofar as relevant, provides:

"3. Everyone charged with a criminal offence has the following minimum rights:
...
(c) to defend himself in person or through legal assistance ..."

The Commission recalls that the right of a fair trial extends to appeal proceedings, though the personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing as it does for a trial hearing (see, inter alia, Eur. Court HR, Kamasinski v. Austria judgment of 19 December 1989, Series A, no. 168, p. 44, para. 106). Furthermore, even where an appeal court has full jurisdiction to review the case on questions both of fact and of law, Article 6 (Art. 6) does not always require a right to a public hearing and a fortiori a right to be present in person (see, Eur. Court HR, Kremzow v. Austria judgment of 21 September 1993, Series A, no. 268-B, p. 43, para. 58).

Moreover, according to Polish law, the presence at the appeal hearing of a defendant remanded in custody is discretionary, provided the defence counsel takes part in the hearing.

In the present case, the applicant was represented by his counsel before the Kraków Court of Appeal. Furthermore, the Commission notes that the applicant has not shown that he requested to be brought before the court at the appeal hearing. In the Commission's opinion, the applicant could have been expected to make such a request if he attached importance to his presence. As he failed to do so, it may reasonably be considered that he unequivocally waived his rights under Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant complains under Article 6 para. 3 (d) (Art. 6-3-d) of the Convention that on account of his prolonged detention he was not able to call defence witnesses.

Article 6 para. 3 (d) (Art. 6-3-d) provides:

> "3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> (d) to examine or have examined witnesses against him and to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him."

The Commission recalls that this provision does not give an absolute right to the examination of witnesses proposed by the defence (see Eur. Court HR, Engel and Others v. Netherlands judgment of 6 June 1976, series A, no. 22, p. 38-39, para. 91). In the present case, the Commission does not find it established that the applicant requested the court to hear any particular witnesses and that the courts failed or refused to examine them.

It follows that this complaint is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. The applicant also complains under Article 13 (Art. 13) of the Convention that he had no effective domestic remedy against violations of his rights guaranteed in Articles 5 and 6 (Art. 5, 6) of the Convention.

However, the requirements of Article 13 (Art. 13) of the Convention are less strict than, and are here absorbed by, those of Article 6 (Art. 6) (see, inter alia, Eur. Court HR, Philis v. Greece judgment of 27 August 1991, Series A, no. 209, p. 23, para. 67).

This part of the application is therefore also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

8. Insofar as the applicant complains under Article 14 (Art. 14) of the Convention that he was deprived of his liberty on the discriminatory ground of his previous criminal record, the Commission finds no separate issue under this provision.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber