CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 14255/02
by Roman GŁADCZAK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 25 October 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 August 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Roman Gładczak, is a Polish national who was born in 1961 and lives in Gdynia.

A. The circumstances of the case

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

1 The first set of criminal proceedings against the applicant

On 28 October 1996 the applicant was arrested on suspicion of robbery.

On 30 October 1996 he was brought before the Gdańsk Regional Prosecutor and charged with armed robbery, kidnapping and extortion. On the same date the Gdańsk District Court remanded the applicant in custody for a period of three months in view of the reasonable suspicion that he had committed the offences in question acting in an organised criminal group. It held that there was a risk that the applicant might obstruct the proceedings or abscond. It further relied on the severity of the anticipated penalty.

Later, several other persons were detained and charged in connection with the same investigation conducted by the Department of the Organised Crime of the Gdańsk Regional Prosecutor's Office.

On 16 January 1997 the Gdańsk Regional Court prolonged his detention until 28 April 1997.

On 16 April 1997 the Gdańsk Court of Appeal ordered that the applicant be kept in custody until 29 July 1997. It relied on the reasonable suspicion that the applicant had committed the offences in question and the gravity of the charges. It also had regard to a number of the suspects and the need to obtain further evidence.

On 16 July 1997 the Court of Appeal extended the applicant's detention until 27 October 1997. It considered that there was a reasonable risk that the applicant might go into hiding or obstruct the proceedings. It also relied on the severity of the anticipated penalty. Lastly, it held that further prolongation of the investigation was not attributable to the prosecuting authorities, but resulted from the fact that further suspects had been identified and arrested. Furthermore, the prolongation was due to a delay in the preparation of some expert reports and the need to request legal assistance from the German authorities.

On 17 September 1997 the Supreme Court prolonged the applicant's detention until 31 December 1997. It held that there was a reasonable risk that the suspects might intimidate the witnesses, given the gravity of the charges against them. It further held that the investigation could not be terminated on account of the prolonged preparation of an expert report and

the need to hear a witness, W.B., who was serving his prison sentence in Germany.

On 28 November 1997 the applicant was indicted before the Gdańsk Regional Court on charges of, *inter alia*, armed robbery, kidnapping, extortion and inflicting bodily harm which had been committed in an armed organised criminal group. There were 16 defendants in the case.

On 7 January 1998 the Gdańsk Regional Court ordered that the applicant be held in custody until 21 September 1998. In addition to the grounds previously invoked, it relied on the complexity of the case and the number of defendants.

On 17 September 1998 the Regional Court extended his detention on remand until 21 October 1998.

On 6 October 1998 the Supreme Court prolonged the applicant's pre-trial detention until 30 January 1999. It held that the fact that proceedings had not been terminated could not be attributed to the authorities, given the volume of evidence and the fact that some hearings had to be cancelled as the defendants' counsel or witnesses had not appeared. It further considered that the applicant had been charged with the commission of the crimes for which he was liable to a sentence of imprisonment exceeding 8 years, and that the circumstances of the case indicated that there was a reasonable risk that the applicant might obstruct the proceedings.

On 19 January 1999 the Supreme Court ordered that the applicant and his 9 co-defendants be kept in custody until 30 June 1999. It relied on the fact that the defendants had attempted to intimidate the witnesses. It also had regard to the severity of the anticipated penalty and the presumption established by Article 258 § 2 of the Code of Criminal Procedure. Furthermore, the Supreme Court considered that the prolongation of the detention beyond the statutory time-limit of two years was justified by the complexity of the case and the volume of evidence to be heard. In that respect, it also observed that in December 1998 the trial court had been prevented from hearing evidence on account of the absence of two defence counsel. Lastly, the Supreme Court noted that the proceedings could not be considered lengthy.

On 2 June 1999 the Supreme Court prolonged the applicant's detention until 31 December 1999. It held that the trial was being conducted efficiently and that it had not been concluded for reasons which were attributable to the defendants and their lawyers. Further, it had regard to the nature of the charges and the attempts to intimidate the witnesses.

The Gdańsk Regional Court held a number of hearings in the case. On 14 December 1999 it delivered its judgment. The Regional Court convicted the applicant of armed robbery, kidnapping, extortion and inflicting bodily harm and sentenced him to 9 years' imprisonment and a fine.

Further decisions on the prolongation of the applicant's detention were given by the Regional Court on 21 December 1999 (ordering his continued

detention until 30 June 2000) and on 21 June 2000 (extending that period until 30 November 2000).

On 11 August 2000 the applicant was served with a copy of the Regional Court's judgment. He subsequently appealed against that judgment.

On 22 November 2000 the Gdańsk Court of Appeal prolonged the applicant's detention until 31 January 2001. On 17 January 2001 his detention was extended until 31 March 2001.

On 6 March 2001 the Court of Appeal held a hearing.

On 7 March 2001 the Court of Appeal quashed the first-instance judgment in respect of the applicant and partly in respect of some other defendants and remitted the case for retrial.

On 14 March 2001 the Court of Appeal ordered that the applicant and his 11 co-defendants be held in custody until 30 June 2001. It considered that the applicant might attempt to obstruct the proceedings given the likelihood of a severe penalty being imposed on him. It also relied on the nature of the charges.

On 19 June 2001 the Court of Appeal prolonged his detention until 30 September 2001, referring to the reasonable suspicion that the applicant had committed the offences in question. It held that continuation of that measure was necessary in order to secure the proper conduct of the proceedings, given the severity of the anticipated penalty.

On 28 September 2001 the Gdańsk Regional Court ordered that the applicant and 11 of his co-defendants be kept in custody until 30 December 2001. It considered that the continuation of that measure was necessary in order to prevent the applicant from interfering with the witnesses.

On 28 December 2001 the Regional Court prolonged the applicant's detention until 30 March 2002. It held that following the Court of Appeal's instructions most of the witnesses who had given evidence at the original trial had to be heard again. In that case there was a reasonable risk that the defendants might interfere with the witnesses. In addition, the court held that given the gravity of the charges and the likelihood that severe penalties would be imposed on them, the defendants might obstruct the proceedings by going into hiding. On 23 January 2002 the Gdańsk Court of Appeal upheld that decision. It considered, *inter alia*, that the Regional Court had attempted to examine the case within a reasonable time, but there were significant delays at the trial which were attributable to the defendants or their counsel. On the other hand, the Court of Appeal instructed the Regional Court to assess the length of detention of each defendant separately. It pointed out that the further prolongation of the detention of those defendants who were not simultaneously serving prison sentences could not be accepted in the long term.

Subsequently, the Regional Court prolonged the applicant's detention on 15 March 2002 (until 30 June 2002) and on 21 June 2002 (until

30 September 2002). It invoked the same grounds as in its previous decisions.

The applicant's detention was prolonged by the Regional Court on subsequent unspecified dates.

It appears that the proceedings before the Gdańsk Regional Court against the applicant and 13 other defendants are still pending.

During the proceedings the applicant filed numerous but unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention. He maintained that the length of his detention was excessive.

2. The applicant's deprivation of liberty between 31 December 1997 and 7 January 1998

On 5 January 1998 the applicant filed an application for release, claiming that there was no court order authorising his continued detention after 31 December 1997. It appears that his application was dismissed on an unspecified later date. He also requested that criminal proceedings be instituted in respect of the unlawful deprivation of his liberty between 31 December 1997 and 7 January 1998. On 26 January 1998 the Malbork District Prosecutor refused to institute criminal proceedings. The applicant did not appeal against that decision.

On 22 May 2000 he requested to be granted retrospective leave to appeal against the decision of 26 January 1998. He argued that he had not been aware that he could appeal against the impugned decision at the relevant time. On 6 July 2000 the Malbork District Prosecutor refused to grant him retrospective leave to appeal, finding that the reasons relied on by the applicant were not sufficient. On 12 December 2000 the Malbork District Court upheld that decision.

3. The applicant's requests for photocopies of the documents from the case-file of the first set of proceedings

In July and August 1999 the applicant requested the Gdańsk Regional Court to send him photocopies of certain documents from the case-file. In October 1999 he also requested a copy of the videotape on which certain evidence had been recorded in the course of the investigation.

It appears from the letter of the President of the Gdańsk Regional Court of 8 December 1999 that some of the requested photocopies had been made available to the applicant. As regards other documents requested, the applicant was informed that his defence counsel had withdrawn the relevant request. In respect of the videotapes, the President of the Regional Court informed him that in accordance with Article 147 § 1 of the Code of Criminal Procedure they could not be copied, as they concerned exclusively the measures that had been taken in the course of the investigation.

In February, April and May 2000 the applicant requested to be sent photocopies of additional documents from the case-file. On 10 July 2000 the applicant received the requested documents. In his reply to the applicant's complaints of 12 July 2000, the President of the Gdańsk Regional Court informed him that it had not been possible to send him the requested documents earlier due to the fact that the judge had been preparing written grounds of the judgment of 14 December 1999. In respect of the request concerning the videotapes, the applicant was referred to the President's earlier reply.

Subsequently, the applicant repeated his request to receive a copy of the videotape. On 28 July 2000 he was informed by the Gdańsk Regional Court that he could receive transcripts of the testimony recorded on the videotape.

In September and November 2000 the applicant received 80 and 119 photocopies of the documents requested from the case-file.

In reply to the applicant's complaint, on 27 November 2000 the President of the Gdańsk Court of Appeal informed him that he found it unsubstantiated. On 29 January 2001 the Court of Appeal informed the applicant that all his requests for photocopies of various documents from the case-file had already been dealt with.

On 18 May 2001 the applicant received photocopies of 26 pages from the case-file. He was informed by the Court of Appeal that he could not receive photocopies of certain other pages, as they did not contain any material relevant for the applicant or were the personal data of the witnesses.

In June 2001 the applicant requested photocopies of a number of pages from the case-file. In October 2001 the Gdańsk Regional Court sent the applicant some of the requested photocopies. On 29 November 2001 the Regional Court informed the applicant that the remaining photocopies would be sent to him as soon as the case-file was returned from the detention centre where it had been made available to the defendants.

4. The second set of the criminal proceedings against the applicant

In June 1996 the Gdynia District Prosecutor opened an investigation into a case of rape committed against certain E.K. by four men. In the course of the investigation the victim gave evidence. Subsequently, three of the suspects were identified. On 1 October 1996 the rape victim recognised the applicant from a photograph as the fourth suspect. On 28 May 1997 three of the suspects were indicted before the Gdańsk Regional Court on charges of rape. At the relevant time the District Prosecutor made a severance order in respect of the applicant, as his whereabouts were unknown. Subsequently, on 30 June 1997 the applicant was indicted before the Gdańsk Regional Court on a charge of rape.

On 13 August 1997 the Regional Court ordered to examine jointly the two cases. The victim was not heard before the trial court.

On 15 April 1999 the Gdańsk Regional Court delivered its judgment against the applicant and his co-defendants. The applicant was convicted of rape and sentenced to 3 years' imprisonment.

The applicant appealed against the judgment of the Regional Court. In his appeal he submitted that the trial court had erroneously convicted him despite the lack of sufficient and reliable evidence. In particular, he argued that the evidence given by the victim of rape had been inconsistent and unreliable. He further argued that he had not been duly recognised by the victim as one of the perpetrators.

On 2 February 2000 the Gdańsk Court of Appeal upheld the first-instance judgment. It held that the assessment of evidence by the trial court, in particular of the evidence given by the victim in the course of the investigation, had been correct. It considered that notwithstanding the fact that the victim had not been heard by the trial court, her version of the relevant events was indirectly supported by the evidence given by four other witnesses who had been heard at the trial. The Court of Appeal placed emphasis on the evidence given by a taxi driver who had driven the victim from the flat where she had been raped to a police station. It further relied on the results of the medical examination of the victim and the relevant expert evidence. The Court of Appeal considered that the all other evidence obtained at the trial supported the evidence given by the victim. It further upheld the findings of the trial court in respect of the applicant's recognition by the victim.

In accordance with the relevant provisions of the domestic law, the sentence imposed by the Court of Appeal was enforceable. On 27 March 2000 the applicant began to serve his sentence.

On 26 June 2000 the applicant filed a cassation appeal with the Supreme Court against the judgment of the Court of Appeal.

The Supreme Court examined the cassation appeal on 20 February 2002 and dismissed it as being obviously groundless. It decided, pursuant to Article 535 § 2 of the Code of Criminal Procedure, not to provide written grounds for its decision.

On 13 June 2002 the applicant requested the President of the Gdańsk Court of Appeal to send him photocopies of certain pages from the case-file. The applicant submits that his request has never been complied with.

5. The enforcement of the court order in respect of costs of the second set of proceedings

On 30 March 2000 the Gdańsk Regional Court ordered the applicant to pay PLN 3,214.79. in respect of costs of the proceedings before the trial court and the Court of Appeal. The applicant appealed against that decision. On 7 June 2000 the Gdańsk Court of Appeal upheld the order of 30 March 2000. The applicant's further appeal against that decision was rejected by

the President of the Court of Appeal and the Supreme Court as being inadmissible in law on 29 June 2000 and 12 January 2001 respectively.

On 2 July 2001 the Bailiff of the Gdynia District Court commenced the enforcement proceedings against the applicant. On 20 September 2001 the bailiff seized certain items of the applicant's movable property for the purposes of the enforcement proceedings. Subsequently, the applicant lodged a complaint with the Gdynia District Court against the actions of the bailiff. On 8 February 2002 the District Court dismissed the applicant's complaint. It found that the enforcement proceedings were conducted on the basis of the final judicial order and in accordance with the relevant rules. It further dismissed the applicant's complaint as to the valuation of the movable property, since it had been established on the basis of an expert report. The applicant also issued civil proceedings against the Gdańsk Regional Court with a view to bring to a halt the enforcement proceedings. However, they were to no avail.

B. Relevant domestic law

1. The Code of Criminal Procedure of 1969

The Code of Criminal Procedure of 1969, which remained in force until 1 September 1998, 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."

The Code set out the conditions governing the continuance 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."

Finally, Article 218 stipulated:

> "If there are no special reasons to the contrary, detention on remand should be lifted, 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."

Until 4 August 1996, i.e. the date on which the relevant provisions of the 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..."

B. The Code of Criminal Procedure of 1997

The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition to leave the country (*zakaz opuszczania kraju*).

Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

"1. Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing another, serious offence; they may be imposed only if the evidence gathered shows a significant probability that an accused has committed an offence."

Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

"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 his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a reasonable risk that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least 3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

The Code sets out the conditions governing the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

"1. Detention on remand shall not be imposed if another preventive measure is sufficient."

Article 259, in its relevant part, reads:

"1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family."

The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

"1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on an application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date of the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, for the purpose of a prolonged psychiatric observation of the accused or a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested with the court of appeal within whose jurisdiction the offence in question has been committed.

COMPLAINTS

1. The applicant complains under Article 5 § 3 of the Convention about the excessive length of his detention on remand in respect of the first set of criminal proceedings against him.

2. The applicant also complains under Article 6 § 1 of the Convention about unfairness of those proceedings.

3. He also complains that in respect of the first set of the criminal proceedings against him there was no judicial order authorising his detention between 31 December 1997 and 7 January 1998. He does not rely on any provision of the Convention.

4. The applicant further complains that, in respect of the first set of the criminal proceedings against him and referring to the decision of the Regional Court of 17 September 1998, the latter court was not competent to extend his detention beyond the two-year time-limit as specified by the Code of the Criminal Procedure. He does not invoke any provision of the Convention in respect of this complaint.

5. In respect of the first set of the proceedings, the applicant complains that the refusal to provide him with copies of certain documents from the case file negatively affected his defence rights. He also complains that he was prevented from relying on them in the proceedings before the European Court of Human Rights. He invoked Articles 13 and 25 of the Convention.

6. In respect of the second set of the criminal proceedings against him, the applicant complains under Article 5 § 1 (a) of the Convention about the unlawful execution of the sentence of imprisonment imposed by the Court of Appeal. In particular, he complains about the overlap between the execution of that sentence and his continued detention in the first set of the criminal proceedings.

7. In respect of the second set of the criminal proceedings against him, the applicant complains under Articles 6 § 1 and 6 § 3(d) of the Convention about the taking and the assessment of evidence in the course of the investigation and at the trial. In particular, he complains that he was never duly recognised by the victim and that the victim did not give evidence at the trial.

8. In respect of the second set of the proceedings, the applicant complains that the refusal to provide him with copies of certain documents from the case file prevented him from relying on those documents in the proceedings before the European Court of Human Rights. The applicant sought to establish a breach of his fair trial rights on the basis of those documents. He invoked Articles 13 and 25 of the Convention.

9. The applicant also complains about a breach of his property rights on account of the unjustified enforcement of the court order in respect of costs of the second set of proceedings. He relies on Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention about the excessive length of his detention on remand in respect of the first set of criminal proceedings against him.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary to give notice of this part of the application to the respondent Government.

2. The applicant also complains under Article 6 § 1 of the Convention about unfairness of those proceedings.

However, the Court notes that the criminal proceedings complained of are still pending before the Gdańsk Regional Court.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. He also complains that in respect of the first set of the criminal proceedings against him there was no judicial order authorising his detention between 31 December 1997 and 7 January 1998. He does not rely on any provision of the Convention.

The Court finds that this complaints falls to be examined under Article 5 § 1 of the Convention.

The Court notes that on 17 September 1997 the applicant's detention was prolonged by the Supreme Court until 31 December 1997. A subsequent decision on his detention was given by the Regional Court on 7 January 1998. The Court further notes that on 5 January 1998 the applicant filed an application for release which was dismissed on an unspecified later date. The applicant also instituted criminal proceedings in respect of the unlawful deprivation of his liberty. However, on 26 January 1998 the Malbork District Prosecutor refused to institute criminal proceedings and the applicant did not appeal against that decision. His subsequent request to be granted leave to appeal out of time against the refusal to institute criminal proceedings was to no avail. The Court notes that the final decision in respect of the criminal proceedings was given by the Malbork District Court on 12 December 2000.

Even assuming that the applicant complied with the requirement of the exhaustion of domestic remedies, his complaint under Article 5 § 1 of the Convention was nevertheless introduced more than six months after the decision of the Malbork District Court of 12 December 2000.

It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

4. The applicant further complains that in respect of the first set of the criminal proceedings against him and referring to the decision of the Regional Court of 17 September 1998, that the latter court was not competent to extend his detention beyond the two-year time-limit as

specified by the Code of the Criminal Procedure. He does not invoke any provision of the Convention in respect of this complaint.

The Court considers that this complaint falls to be examined under Article 5 § 1 of the Convention.

It notes that on 17 September 1998 the Regional Court prolonged the applicant's detention until 30 January 1999. However, on 6 October 1998, i.e. before the expiry of the two-year time-limit set out in the Code of Criminal Procedure, the Supreme Court ordered that the applicant be held in custody until 30 January 1999.

In any event, this complaint has been introduced more than six months after the date on which the relevant period came to an end.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

5. In respect of the first set of the proceedings, the applicant complains that the refusal to provide him with copies of certain documents from the case file negatively affected his defence rights. He also complains that he was prevented from relying on them in the proceedings before the European Court of Human Rights. He invoked Articles 13 and 25 of the Convention.

The Court considers that this complaint falls to be examined separately under Article 6 § 1 and Article 34 of the Convention.

In so far as the applicant alleges that the relevant authorities' refusal prejudiced his defence rights, the Court notes that in fact the applicant received most of the requested copies. In any event, this complaint is premature as the criminal proceedings against the applicant are still pending before the Gdańsk Regional Court. Accordingly, the applicant still can, and should, put the substance of the complaint before the domestic authorities and ask for appropriate relief.

It follows that this part of the applicant's complaint which falls to be examined under Article 6 § 1 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

In so far as the applicant alleges that the refusal in question had a negative impact on the exercise of his right of individual petition, the Court notes that the applicant made voluminous submissions which were accompanied by a large number of pertinent documents. The Court finds no indication in the present case that the exercise of the applicant's right of individual petition was impeded to any significant extent.

It follows that this part of the applicant's complaint, which falls to be examined under Article 34 of the Convention, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

6. In respect of the second set of the criminal proceedings against him, the applicant complains under Article 5 § 1 (a) of the Convention about unlawful execution of the sentence of imprisonment imposed by the Court

of Appeal. In particular, he complains about the overlap between the execution of that sentence and his continued detention in the first set of the criminal proceedings.

Article 5 § 1 (a) of the Convention 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ..."

The Court notes that the applicant was convicted of rape and sentenced to three years' imprisonment by the Gdańsk Regional Court on 15 April 1999. That judgment was upheld by the Court of Appeal on 2 February 2000. Subsequently, in accordance with the relevant provisions of domestic law, the applicant began to serve his sentence of imprisonment. In these circumstances, the Court finds that the applicant was deprived of liberty after conviction by a competent court and in accordance with a procedure prescribed by law.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

7. In respect of the second set of the criminal proceedings against him, the applicant complains under Articles 6 § 1 and 6 § 3(d) of the Convention about the taking and the assessment of evidence in the course of the investigation and at the trial. In particular, he complains that he was never duly recognised by the victim and that the victim did not give evidence at the trial.

In respect of the applicant's complaint concerning the fact that the victim of rape did not give evidence at the trial, the Court notes that the applicant did not raise this issue in his appeal against the judgment of the Regional Court of 15 April 1999.

Leaving aside the issue of the exhaustion of domestic remedies, the Court reiterates that the admissibility of evidence is primarily governed by the rules of domestic law, and that, as a rule, it is for the national courts to assess the evidence before them. The task of the Court is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair. All evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a rule, these rights require that the defendant should be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings. However, Article 6 does

not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normal for the national courts to decide whether it is necessary or advisable to hear a witness (see *S.N. v. Sweden*, no. 34209/96, § 44, ECHR 2002-V).

The Court also takes into account the special features of criminal proceedings concerning rape and other sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular as they entail being confronted again with the defendant (see *Scheper v. the Netherlands* (dec.), no. 39209/02, 5 April 2005).

The Court observes that in the present case the applicant's conviction of the rape did not rest solely on the evidence given by the victim in the course of the investigation but that it was corroborated by other evidence. Furthermore, the applicant did not raise the issue of the victim not being heard before the trial court in his appeal.

Finding no indication that unfair or arbitrary conclusions were drawn, and recalling that the admissibility and assessment of evidence are matters that fall to be decided primarily at the domestic level, the Court is satisfied that the criminal proceedings at issue, taken as a whole, were fair within the meaning of Article 6 of the Convention.

It follows that the application must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

8. In respect of the second set of the proceedings, the applicant complains that the refusal to provide him with copies of certain documents from the case file prevented him from relying on those documents in the proceedings before the European Court of Human Rights. The applicant sought to establish a breach of his fair trial rights on the basis of those documents. He invoked Articles 13 and 25 of the Convention.

The Court considers that this complaint falls to be examined under Article 34 of the Convention.

In so far as the applicant alleges that the refusal in question had a negative impact on the exercise of his right of individual petition, the Court notes that the applicant made voluminous submissions which were accompanied by a large number of pertinent documents. The Court finds in the present case no indication that the exercise of the applicant's right of individual petition was impeded to any significant extent. In so far as the applicant sought to establish a breach of his fair trial rights, the Court notes that it has dealt with the applicant's submissions under Article 6 § 1 of the Convention and has found them inadmissible.

It follows that this part of the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

9. The applicant also complains about a breach of his property rights on account of unjustified enforcement of the court order in respect of costs of

the second set of proceedings. He relies on Article 1 of Protocol No. 1 to the Convention.

However, the Court notes that the enforcement proceedings against the applicant were instituted on the basis of the final and enforceable judicial order in respect of costs of the proceedings. Furthermore, the applicant's subsequent challenges to the enforcement proceedings were unsuccessful.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the excessive length of his detention;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President