CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13851/02
by Andrzej GRABAN
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 July 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 25 February 2002,

Having regard to the partial decision of 4 May 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Andrzej Graban, is a Polish national who was born in 1957 and lives in Gdynia, Poland. He is represented before the Court by Mr P. Rybiński, a lawyer practising in Gdańsk. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

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

On 7 November 1996 the applicant was arrested by the police and on the following day he was charged with homicide. On 9 November 1996 the Gdynia District Court (*Sąd Rejonowy*) ordered that he be detained on remand in view of the reasonable suspicion that he had committed the offence in question, the grave nature of that offence and the need to obtain and secure evidence. Furthermore, the District Court considered that there was a risk that the applicant could induce witnesses to give false testimonies. That decision was upheld on appeal on 25 November 1996.

On 28 January 1997 the Gdańsk Regional Court (*Sąd Okręgowy*) prolonged the applicant's detention until 6 May 1997. It invoked the same grounds as originally given for his detention. In addition, the Regional Court referred to the necessity to hear witnesses and obtain various expert opinions in the investigation.

On 5 May 1997 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) ordered that the applicant be kept in custody until 6 August 1997. It relied on the reasonable suspicion that the applicant had committed the offence in question and the need to take further evidence.

On 1 August 1997 the applicant was indicted on the charge of homicide before the Gdańsk Regional Court. The bill of indictment comprised several charges of homicide brought against 3 accused.

On 18 December 1997 the Gdańsk Regional Court ordered that the applicant be held in custody until the first-instance judgment had been given, but not longer than 7 November 1998. It relied on the grounds previously given for the applicant's detention and added that, given the severity of the anticipated sentence, that measure was also justified by the need to secure the proper course of the trial. That decision was upheld on appeal on 19 January 1998.

On 6 November 1998 the Gdańsk Regional Court convicted the applicant as charged and sentenced him to 8 years' imprisonment. The applicant and the prosecutor appealed.

On 19 January 1999 the Regional Court ordered that the applicant's detention be continued pending his appeal against the conviction until

31 May 1999. It considered that the severity of the imposed sentence fully justified the continuation of that measure.

On 5 May 1999 the Court of Appeal quashed the first-instance judgment and remitted the case.

On 26 May 1999 the Court of Appeal prolonged the applicant's detention until 30 June 1999. It relied on the reasonable suspicion that the applicant had committed the offence in question and the severity of the anticipated penalty. That decision was upheld on appeal on 24 June 1999.

On 29 June 1999 the Court of Appeal ordered that the applicant be kept in custody until 30 September 1999. It reiterated the grounds given for its earlier decision of 26 May 1999.

On 14 September 1999 the Regional Court ordered further prolongation of the applicant's detention until 31 December 1999.

The Regional Court opened the retrial on 29 December 1999. On the same date it prolonged the applicant's detention until 1 April 2000. On 19 June 2000 it ordered that the applicant be held in custody until 30 September 2000.

On 18 September 2000 the Regional Court prolonged the applicant's detention until 31 December 2000. It reiterated the grounds given previously for his detention. It also observed that there was a risk of pressure being brought to bear on witnesses if the applicant was released. That decision was upheld on appeal on 4 October 2000.

On 29 December 2000 the Regional Court ordered that the applicant be held in custody until 29 March 2001, considering that it was the only measure capable of securing the proper conduct of the trial. On 17 January 2001 that decision was upheld on appeal. The applicant's detention was subsequently prolonged on an unspecified later date.

Since the beginning of the proceedings the applicant had made numerous, unsuccessful applications for release. He appealed, likewise unsuccessfully, against the refusals to release him and the decisions prolonging his detention.

On 26 July 2001 the Gdańsk Regional Court convicted the applicant of homicide and sentenced him to 10 years' imprisonment. Following the applicant's appeal, the conviction was upheld by the Gdańsk Court of Appeal on 23 May 2002. On 27 June 2003 the Supreme Court dismissed the applicant's cassation appeal against the judgment of the Court of Appeal.

COMPLAINT

The applicant complained under Article 5 § 3 of the Convention about the excessive length of his detention on remand.

THE LAW

The applicant alleges a violation of Article 5 § 3 of the Convention as regards the length of his detention on remand.

The Court recalls that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken".

The Court notes that the applicant was remanded in custody on 7 November 1996. On 6 November 1998 the trial court convicted him of homicide. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 104-105, ECHR 2000-XI). On 5 May 1999 the Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 26 July 2001, when the trial court again convicted the applicant.

The Court considers that the six-month time-limit set down by Article 35 § 1 of the Convention began to run on 26 July 2001, being the end of the situation of which the applicant complains. Since the application was introduced on 25 February 2002, it has been presented more than six months after the date on which relevant period to be considered under Article 5 § 3 came to an end.

The Government have not addressed that issue in their observations.

The Court has considered whether the absence of observations from the Government on the question of the six months' rule can affect the position. It recalls that the six months' rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question, after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. It is therefore not open to the Court to set aside the application of the six months' rule solely because a Government have not made a preliminary objection based on it (see *Walker v. United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

It follows that the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President