AS TO THE ADMISSIBILITY OF

Application No. 25415/94
by Ryszard KLAMECKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 18 October 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 23 November 1993 by Ryszard KLAMECKI against Poland and registered on 13 October 1994 under file No. 25415/94;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, a Polish citizen born in 1948, is a businessman residing in Wroclaw.

The applicant was arrested and detained on remand on 30 November 1991 on suspicion of fraud of about one billion zloty.

On 31 August 1992 the bill of indictment was transmitted to the Wroclaw Regional Court (S*d Wojewódzki). On 13 November 1992 the President of the Court found that the indictment was complete and decided that the case could be heard by the Court.

From 3 to 10 December 1992 the applicant was treated at a specialised hospital.

The first hearing was held on 22 and 23 December 1992. The next hearing, set for 26 and 27 January 1993, was adjourned as the applicant had fallen ill. The Court ordered the applicant's examination by a specialist of forensic medicine.

At a hearing on 2 February 1993 the applicant complained of bad health. The hearing set for 3 February 1993 was then cancelled without

reasons being given and adjourned to 11 March 1993.

On 11 March 1993 the Court adjourned the hearing as its order of 27 January 1993 for the applicant's medical examination had not been carried out.

On 4 April 1993 the applicant submitted a request for release.

On 8 and 9 April 1993 the hearing was adjourned as a lay judge was not present. Apparently a new hearing was fixed for 13 and 14 April 1993, but then adjourned to 17 until 21 May 1993.

On 4 May 1993 the applicant requested his release, invoking Article 6 para. 1 of the Convention. He submitted that the bill of indictment did not disclose a reasonable suspicion that he had committed the offence in question. He also complained of the length of his detention.

On 6 May 1993 the Wroclaw Regional Court refused to grant the applicant's requests for release of 4 April and 4 May 1993. The Court found a reasonable suspicion that the applicant had committed the offences at issue and that his release would jeopardise the court proceedings, in particular as they were in their initial phase.

On 6 May 1993 the Court also informed the applicant that the hearing of 13 and 14 April 1993 had been adjourned "for objective organisational reasons" ("z obiektywnych wzgl*dów organizacyjnych").

On 6 May 1993 the applicant withdrew his lawyer's power of attorney as the latter had failed to comply with the applicant's request to contact him.

On 11 May 1993 the applicant appealed to the Wroclaw Court of Appeal (S*d Apelacyjny) against the decision of 6 May 1993 refusing his requests for release. He submitted that this decision had not been issued within the three days' time limit provided for by the law, and that his lawyer could not be present at the examination of his request, whereas the Public Prosecutor was entitled to be. He complained that the Regional Court had failed to consider his argument based on Article 6 para. 1 of the Convention. He pointed out that the Court's statement that the court proceedings were in an initial phase confirmed his complaint that the proceedings were not progressing. On the same day the applicant submitted a further request for release.

At the hearing on 17 May 1993 it transpired that the Regional Court had censored the applicant's letter to the lawyer and transmitted it to him only on 14 May 1993. The hearing set for 17 until 21 May 1993 was adjourned to 13 and 14 July 1993 in order to allow the applicant to have an officially assigned lawyer.

Apparently also on 17 May 1993 the Wroclaw Regional Court refused the applicant's further request for release. The applicant appealed against this decision to the Wroclaw Court of Appeal, invoking Article 5 para. 3 and Article 6 para. 1 of the Convention. He submitted that there had been no progress in the proceedings since 22 December 1992, i.e. the date of the first hearing.

On 3 June 1993 the Wroclaw Court of Appeal upheld the decision of 6 May 1993 not to release the applicant. The Court accepted that the Regional Court had breached Article 214 of the Code of Criminal Procedure in that it had considered the applicant's request of 4 April 1993 only after a month, instead of within three days. With regard to the applicant's complaint that the Regional Court had failed to consider his complaints under Article 5 para. 3 and Article 6 para. 1 of the Convention, the Court considered that it was sufficient that the Regional Court's decision was well-founded in accordance with Article 217 of the Code of Criminal Procedure.

On 21 June 1993 the applicant again requested his release from detention. He submitted that his detention was unjustified and too long. He complained that there was no reasonable progress in the proceedings. On 24 June 1993 the Wroclaw Regional Court dismissed the applicant's request.

On 24 June 1993 the President of the Wroclaw Regional Court, apparently in reply to the applicant's letters, stated that the proceedings were not exceeding a reasonable time. He stated that "the length of the proceedings is due to various circumstances, including the state of your health and the Court's efforts (...) to guarantee your defence rights" ("przedluzanie si* czasu trwania post*powanie jest wynikiem szeregu okolicznosci, w tym takze Pana stanu zdrowia, d*zenia przez s*d (...) do zapewnienia Panu w pelni prawa do obrony").

In a letter of 1 July 1993 the applicant complained to the Regional Court about the length of the proceedings.

On 2 July 1993 the applicant appealed against the decision of 24 June 1993. He stated that this decision was in breach of Article 5 para. 3 and Article 6 para. 1 of the Convention. On 8 July 1993 the Wroclaw Court of Appeal dismissed this request as the applicant had failed to submit any new arguments which would justify his release.

The hearing set for 13 and 14 July 1993 was not held as the lawyer of one of the applicant's co-accused failed to appear.

On 6 August 1993 judge A.Z. of the Regional Court informed the applicant in reply to his letter of 1 July 1993 that his complaints about the length of the proceedings were inappropriate. The judge stated that "as two accused were detained on remand, the dates of hearings were being set in the manner foreseen for cases of this kind and depending on the existing facilities of the Court." ("ze wzgl*du na fakt, iz w sprawie dwóch oskarzonych jest tymczasowo aresztowanych, terminy kolejnych rozpraw s* okreslane w sposób przewidziany dla tego rodzaju spraw i uzalezniony od realnych mozliwosci S*du.")

On 10 August 1993 one of the lay judges failed to appear. On 11 August another co-accused was ill. The hearing was adjourned to 23 August 1993.

On 19 August 1993 the Wroclaw Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 24 June 1993. The Court considered that the applicant had failed to indicate any new circumstances justifying his release.

On 23 August 1993 the hearing was discontinued at 12h20 as the judge had urgently to leave the Court.

On 24 August 1993 the President of the Wroclaw Regional Court informed the Polish Helsinki Committee, to whom the applicant had apparently complained, that the case was complex. He submitted that as the applicant had frequently submitted requests for release, the case-file had to be sent to the Court of Appeal and thus it was impossible to set the dates of the hearing before the Wroclaw Regional Court. On 26 and 27 January and on 2 February 1993 the hearing had not been held as the applicant had been ill. Moreover, the applicant had wished to have access to the case-file, which had prevented the Court from holding the hearing. The President confirmed that on 8 and 9 April 1993 the lay judge had failed to appear.

On 1 September, 17 September and 5 October 1993 no hearings were held as one of the co-accused failed to appear. A further hearing was held on 22 October 1993. The hearing set for 15 November 1993 did not take place as the judge received a promotion on that day.

On 28 September 1993 the applicant wrote a letter to the Minister of Justice, complaining about the length of the proceedings.

The hearing set for 3 December 1993 was not held.

On 3 December 1993 the Wroclaw Regional Court decided to release the applicant. The Court considered that the case was no longer in an initial stage and ample evidence had been gathered. Thus, the risk that the applicant would jeopardise the proceedings by hiding or suppressing evidence had diminished. The detention had therefore become devoid of its purpose. The Court found no risk of absconding as the applicant wished to get married.

Hearings set on 4 and 31 January 1994 were not held as one of the co-accused failed to appear.

The Wroclaw Regional Court set the next date for a hearing for 6 October 1994.

The proceedings are still pending.

COMPLAINTS

The applicant complains under Article 5 para. 3 of the Convention of the length of his detention.

He also complains under Article 6 para.1 of the Convention that the length of the criminal proceedings exceeded a reasonable time.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 November 1993 and registered on 13 October 1994.

On 22 February 1995 the Commission, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure, decided to communicate the application to the respondent Government, who were invited to submit their observations on its admissibility and merits before 2 May 1995.

By letter of 25 June 1995 the Government requested an extension of the time-limit for submission of its observations until 18 September 1995. On 8 August 1995 this request was refused as it had been submitted after the expiry of the time-limit. The Government were nevertheless invited to submit the observations, together with a translation into an official language, before 10 September 1995, in order for the Commission to decide whether to take into consideration the observations thus submitted. The Government did not submit the observations within this time-limit.

By letter of 18 September 1995 the Government were informed that the application was being considered for inclusion in the list of cases for examination by the Commission at its session beginning on 16 October 1995.

THE LAW

1. The applicant complains under Article 5 para. 3 (Art. 5-3) of the Convention of the length of his detention. He also complains under Article 6 para. 1 (Art. 6-1) of the Convention that the length of the criminal proceedings exceeded a reasonable time.

Article 5 para. 3 (Art. 5-3) of the Convention reads:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable

time or to release pending trial. ..."

Article 6 para. 1 (Art. 6-1) of the Convention provides, as far as relevant:

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

2. The Commission recalls that Poland recognised the competence of the Commission to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". It follows that the Commission is not competent to examine complaints relating to alleged violations of the Convention by acts, decisions or events that have occurred prior to this date.

However, the Commission further recalls the Convention organs' case-law, according to which where, by reason of its competence ratione temporis, the Commission can only examine part of the proceedings, it 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). Likewise, in examining the length of detention undergone subsequent to the date of the recognition of the right of individual petition, the Commission takes account of the stage which the proceedings had reached. To that extent, therefore, it can have regard to the previous detention (see No. 7438/76, Dec. 9.3.79, D.R. 12 p. 38).

It follows that the Commission is competent ratione temporis to examine the applicant's complaints insofar as they relate to the proceedings after 30 April 1993 and taking into account the stage reached at this date.

3. Under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted.

The Commission recalls that the application was communicated to the Polish Government who were invited to submit observations on the admissibility and merits of the application. The Government submitted a request for extension of the time-limit eight weeks after its expiry. This request was refused, having been submitted out of time. The Government were nevertheless invited to submit the observations, together with a translation into an official language, before 10 September 1995. No observations have been submitted within this time limit.

It is the normal practice of the Commission, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations. The Commission considers that the same principle should be applied where, as in the present case, the respondent Government have not submitted any observations at all (see No. 22947/93, Dec. 11.10.1994, D.R. 79-A, p. 108).

It follows that this part of the application cannot be rejected under Article 26 (Art. 26) of the Convention for non-exhaustion of domestic remedies.

4. a) The Commission further recalls the Convention organs' case-law according to which the parties must be invited to participate in the examination of the facts by the Commission, though such an examination cannot be hindered by the manner in which the parties in fact participate (see No. 8007/77, Dec. 10.7.78, D.R. 13 p. 85).

b) In the present case, in the examination of the complaints about the length of the criminal proceedings and about the length of the detention, regard must be had to the Commission's competence ratione temporis. The proceedings started at the latest on 30 November 1991, i.e. at the date when the applicant was arrested. He was released on 3 December 1993. The proceedings are still pending before the Wroclaw Regional Court, acting as a first instance court. The Commission observes that the period to be considered began only on 30 April 1993, i.e. the date on which the recognition of the right of individual petition against Poland took effect. The length of the proceedings to be considered is therefore two years and five months. The period of detention after 30 April 1993 was seven months. However, in the examination of the reasonableness of the length of the proceedings and the length of the detention after 30 April 1993, the stage of the proceedings at this date can be taken into account. Also, regard must be had to the previous detention (see No. 7984/77, loc. cit.; No. 7438/76, loc. cit.)

Having examined the application, 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. 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.

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)