AS TO THE ADMISSIBILITY OF

Application No. 31583/96
by Ryszard KLAMECKI
against Poland

The European Commission of Human Rights sitting in private on 20 October 1997, the following members being present:

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

Mr M. de SALVIA, Secretary to the Commission

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

Having regard to the application introduced on 6 December 1995 by Ryszard KLAMECKI against Poland and registered on 24 May 1996 under file No. 31583/96;

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 1948, is a businessman residing in Wroclaw, Poland. He is currently detained in Wroclaw prison.

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

Particular circumstances of the case

a. Criminal proceedings instituted against the applicant

On 22 November 1995 the Wroclaw-Stare Miasto District Prosecutor (Prokurator Rejonowy) charged the applicant with fraud committed together with several accomplices and detained him on remand for three months in view of the reasonable suspicion that he had committed the offence in question and the fear that he might obstruct the due course of the proceedings. On an unspecified date the applicant appealed to the Wroclaw-Sródmiescie District Court (S*d Rejonowy) against the order for his detention and, subsequently, on 27 November 1995, lodged a pleading supplementing his appeal. In his pleading he submitted that his detention was imposed by a prosecutor, a party to the proceedings, whereas under the European Convention detention must be imposed either by a judge or by another officer exercising judicial power. On 5 December 1995 a judge sitting as the Wroclaw-Sródmiescie District Court dismissed the appeal, finding that the detention in question had an adequate basis. The applicant did not participate in the court session whereas the Wroclaw-Stare Miasto District Prosecutor did.

On 28 November and 14 December 1995 the applicant requested the Wroclaw-Sródmiescie District Court to appoint a defence lawyer for him. The request was granted on 19 January 1996. Shortly afterwards, the applicant informed the investigating prosecutor that an officially appointed lawyer would represent him in the criminal proceedings in question.

On 11 December 1995 the applicant requested the Wroclaw-Stare Miasto District Prosecutor to release him. The request was dismissed on 12 December 1995 by the prosecutor at first instance and on 30 December 1995 on appeal, in view of the reasonable suspicion that the applicant had committed the offence charged and the need to ensure the due course of the proceedings.

On 21 December 1995 the applicant again requested the prosecutor to release him. He submitted that his health was severely affected by the prison conditions. The request was dismissed on 2 January 1996 by the prosecutor at first instance and on 24 January 1996 on appeal on the grounds that according to a medical report of 22 December 1995 the applicant's state of health did not militate against his detention.

In the meantime, on an unspecified date, the Wroclaw Regional Prosecutor (Prokurator Wojewódzki) took over the investigations from the Wroclaw-Stare Miasto District Prosecutor.

On 5 February 1996 the applicant requested the Wroclaw Regional Prosecutor to release him in view of his state of health, submitting that he had been suffering from diabetes, high blood pressure and arteriosclerosis and that he did not receive the appropriate medical treatment and diet in prison. The request was dismissed on 7 February 1996 by the prosecutor at first instance and on 21 February 1997 on appeal on the grounds that according to a medical report of 6 February 1996, the applicant's state of health did not militate against his detention.

On 15 February 1996, upon the request of the Wroclaw Regional Prosecutor, the Wroclaw-Sródmiescie District Court prolonged the applicant's detention until 30 June 1996. The applicant appealed on 26 February 1996, arguing that he had never been brought before a judge at any stage of the proceedings relating to the lawfulness of his detention. On 1 March 1996 the Wroclaw Regional Court (S*d Wojewódzki) upheld the decision of the court of first instance. The Wroclaw

Regional Prosecutor participated in the court session, whereas neither the applicant nor his lawyer did.

On 18 March 1996 the applicant requested the Wroclaw-Sródmiescie District Court to release him under police supervision. The request was transferred to the Wroclaw Regional Prosecutor since at the investigative stage only a prosecutor was competent to deal with such a request. On 3 June 1996 the request was dismissed by the prosecutor at first instance and on 28 June 1996 on appeal, since there existed a reasonable suspicion that the applicant had committed the offence charged and there were no particular reasons militating in favour of his release.

On 6 May and 3 June 1996 the applicant again requested the Wroclaw-Sródmiescie District Court to release him under police supervision. The requests, after having been transferred to the prosecutor at first instance, i.e. the Wroclaw Regional Prosecutor, were dismissed by that prosecutor on 28 June 1996 and, on appeal, on 14 July 1996 since the original reasons for the applicant's detention had not ceased to exist.

On 25 June 1996, upon the Wroclaw Regional Prosecutor's request, the Wroclaw-Sródmiescie District Court prolonged the applicant's detention until 30 September 1996.

On 25 July and 5 August 1996 the applicant requested the Wroclaw Regional Court to release him under police supervision, claiming a breach of Article 5 para. 3 of the Convention in that he had neither been tried within a reasonable time, nor released pending trial. On 30 August 1996 the court held a session and, after having heard the submissions of the Wroclaw Regional Prosecutor, dismissed the requests in view of the reasonable suspicion that the applicant had committed the offence charged and the need to ensure the due course of the proceedings. In his appeal of 6 September 1996 the applicant submitted that he was not entitled to participate in the court session relating to his request for release, whereas the prosecutor could put forward his submissions in the applicant's absence. On 16 September 1996 the Wroclaw Court of Appeal (S*d Apelacyjny), after having heard the prosecutor's submissions, upheld the decision of the court of first instance and the reasons given therefor.

On 9 August 1996 the Wroclaw-Sródmiescie District Court dismissed a subsequent request for release by the applicant, finding, inter alia, that the fact that the detention had been imposed by the prosecutor, i.e. a party to the proceedings, was not relevant as a factor militating against his continuing detention. On 31 October 1996, upon the applicant's appeal, the Wroclaw Regional Court quashed the decision of 9 August 1996 and held that, in accordance with the Law of 4 August 1996 on Amendments to the Code of Criminal Procedure, only a regional court was competent to deal with the applicant's request. The court examined the applicant's request and dismissed it in view of the reasonable suspicion that the applicant had committed the offence charged, the need to ensure the due course of proceedings and the severity of the potential penalty. The Wroclaw Regional Prosecutor participated in the court session, whereas the applicant and his lawyer did not. On 22 November 1996, upon the applicant's appeal, the Wroclaw Court of Appeal held a court session and, after having heard the prosecutor's opinion, upheld the decision of the court of first instance and the reasons given therefor.

On 4 September 1996 the Wroclaw Regional Prosecutor ordered that evidence be taken from a graphology expert. On 5 September the prosecutor ordered that evidence be taken from two psychiatric experts in order to assess the applicant's mental health.

On 30 September 1996 the Wroclaw Regional Prosecutor lodged a bill of indictment with the Wroclaw-Sródmiescie District Court. On

6 November 1996 the court appointed a new defence counsel for the applicant. The court scheduled hearings for 18 and 19 December 1996.

On 21 November 1996 the court appointed a new lawyer for the applicant since the counsel appointed for him by that court on 6 November 1996 had represented a plaintiff in the civil proceedings instituted against the applicant. On 26 November 1996 the court served a copy of the bill of indictment on the new lawyer.

On 1 December 1996 the applicant requested the Wroclaw-Sródmiescie District Court to release him. He submitted that his detention had lasted an excessively long time and that, in addition, he had previously been detained in the other criminal proceedings for a period of two years and five days. His detention had in all lasted more than three years and had, therefore, amounted to serving a prison sentence. He invoked Article 5 para. 3 of the Convention in support of his submissions. On 4 December 1996 his request was dismissed at first instance and on appeal on 31 December 1996 in view of the severity of the sentence which might be imposed and the need to ensure the due course of proceedings.

On 10 December 1996 the applicant requested the court to replace his second officially-appointed lawyer. The request was dismissed on 9 January 1997.

On 18 and 18 December 1996 the court adjourned the hearings since one of the co-defendants had failed to appear.

On 31 December 1996 the applicant again requested the court to release him under police supervision. The request was dismissed on 7 January 1997 on the grounds of the need to ensure the due course of the proceedings and the severity of the penalty which might be imposed. On 15 January 1997 the applicant filed an appeal, submitting that neither he nor his lawyer had been informed of or summoned to the court's session concerning the examination of his request for release, contrary to Article 5 para. 4 of the Convention. On the same day he requested the Wroclaw Regional Court to be allowed to attend that court's session concerning the examination of his appeal in order to put forward his submissions. On 17 January 1997 the Wroclaw-Sródmiescie District Court refused to allow his appeal since a further appeal against the court's decision on a request for release was inadmissible under the Law of 6 December 1996 on Amendments to the Code of Criminal Procedure.

On 10 January 1997, upon the applicant's request, the court granted him access to the case-file for three days. On 15 January the applicant complained to the court that the access granted was insufficient and that he was not able to prepare his defence. Between 21 and 28 January 1997 he again had access to the case-file for two hours per day.

On 29 January 1997 the court adjourned a hearing since another co-defendant failed to appear. The applicant again requested the court to allow him access to the entire case-file. On 13, 14, 17 and 20 February the applicant read the case-file for two hours per day.

On 10 February and 3, 10, 17 and 25 March, and 1, 8 and 17 April 1997 the applicant requested the Wroclaw-Sródmiescie District Court to release him under police supervision. The requests were dismissed on 12 February and 10, 12, 20 and 28 March, and 4, 11 and 22 April 1997, respectively, in view of the need to ensure the due course of the proceedings and the severity of the sentence which might be imposed, i.e. from one to ten years' imprisonment.

On 20 February 1997 the court adjourned a hearing since it found it necessary to replace the defence lawyer appointed for the applicant. On 5 March 1997 the court adjourned a hearing since another co-

defendant failed to appear. The hearing scheduled for 19 March 1997 was cancelled as the presiding judge was ill. On 3 April 1997 the court, on the applicant's request of 20 March 1997, sent the case-file to the prison. The prison authorities left the case-file at the applicant's disposal on 7, 8 and 9 April 1997 for approximately two hours per day.

During the hearings of 10 and 21 April 1997 the court heard evidence from the applicant. During the hearing of 10 April 1997 the applicant again requested the court to release him under police supervision. The request was dismissed in view of the need to ensure the due course of the proceedings and the severity of the sentence which might be imposed.

On 11 April 1997 the applicant requested the court to grant him access to the case-file in prison. He received the case-file on 18 April 1997 for approximately two hours. Before the hearing of 21 April 1997 the court granted the applicant an access to the case-file for one hour.

On 22, 24, 28, 29 and 30 April 1997 the applicant requested the court to have an access to the entire case-file in prison.

On 30 May 1997 the applicant read the materials on the case-file which in all should have comprised twenty-four volumes. On 2 June 1997 he complained to the court that he had not been provided with the nineteenth volume and that he had never seen materials contained in that volume. Also, no records of the hearings of 10 and 21 April 1997 had been enclosed therewith.

On 14 July 1997 the applicant requested the Wroclaw-Śródmiescie District Court to release him in view of the state of his health which had been seriously affected by the harsh prison conditions resulting from the flood in Wroclaw.

b. Conditions of the applicant's detention

Between 4 December 1995 and the end of 1996 the applicant filed numerous complaints, petitions and applications addressed to various public organs (in particular to: the Minister of Justice, the Ombudsman, the prosecutors and courts competent to deal with his case, the Governor of Wroclaw Prison and the Chief Governor of Prisons). He submitted that even though he had been suffering from diabetes, arteriosclerosis and high blood pressure, the prison authorities had not provided him with adequate medical care. Nor did they provide him with appropriate food, ignoring the fact that he had requested a special diet on all possible occasions. Further, he complained about the unhygienic conditions of his detention and the lack of proper light in his cell as well as the impossibility of his obtaining books and journals from his family.

On 22 December 1995 medical experts submitted their report to the Wroclaw-Stare Miasto District Prosecutor. After having examined the applicant they found that he could be treated in prison.

On 25 January 1996 the Wroclaw-Stare Miasto District Prosecutor ordered a fresh medical expert's report in order to assess the applicant's state of health. According to the expert's report, which was submitted on 6 February 1996, the state of the applicant's health did not militate against his detention and the medical treatment received by him in prison was sufficient.

On 29 January 1996 the Deputy Governor of Wroclaw Prison replied to the applicant's complaints lodged in December 1995 and January 1996 and admitted that, after having examined the prison records, he had found that the complaints about inappropriate food had been justified. Therefore, he ordered that blood be taken from the applicant and

analysed and that he would receive the food requested. He noted that the applicant had received the books and journals requested.

On 12 February and 21 March 1996 the Ombudsman replied to the petitions from the applicant, informing him that after verifying the relevant facts, his complaints could not be deemed well-founded. The prison conditions were not in fact entirely satisfactory, however this was not the fault of the Wroclaw Prison authorities. Moreover, prison conditions were difficult throughout Poland.

On 29 February 1996 the Governor of Wroclaw Prison replied to a further eleven complaints by the applicant, finding them ill-founded. He admitted that the sanitary conditions were in fact unsatisfactory and explained to the applicant that the necessary works would be done in order to improve the situation.

On 30 April 1996 the Wroclaw Regional Prosecutor replied to the applicant's complaints lodged in February, March and April 1996, informing the applicant that he had been and still was receiving the food recommended by doctors in their reports relating to the applicant's health. Thus, his subsequent complaints about the food in prison were ill-founded.

On 23 July, 9 September and 11 October 1996 the Minister of Justice replied to petitions filed by the applicant in May, July and September 1996, finding that most of the complaints about the prison conditions had been unjustified. In particular, as from the date of his confinement (i.e. 22 November 1995) the applicant had been examined by prison doctors and various other medical experts on forty occasions. As a result, the state of his health was consistently supervised and he had received the treatment and food recommended by doctors. Therefore his complaints about the insufficient medical care and the inappropriate food in prison lacked any basis. As regards general conditions in Wroclaw Prison, they did not essentially differ from those in other Polish prisons. Also, the applicant had access to the prison library and newspapers delivered to his cell. However, the light in his cell seemed to be insufficient and this complaint alone would be further examined.

On 15 October 1996 the Wroclaw Regional Superintendent of Prisons informed the applicant that an inspection of his cell had confirmed that his complaints about water dripping from the walls of his cell were unsubstantiated. On 28 October 1996 he replied to a further thirteen complaints by the applicant, finding that they had repeated the same facts which had already been verified in February and April 1996. On 27 November 1996 the Superintendent informed the applicant that, after having ordered an inspection of the applicant's cell, he had found his allegations about the insufficient light ill-founded.

On 12 and 13 July 1997 a massive flood-wave inundated the South-West part of Poland, severely affecting Wroclaw. A considerable part of the city was washed away or destroyed. At the same time, the authorities commenced an action aimed at evacuating inhabitants of the most affected districts of Wroclaw and ameliorating the situation of persons who were not exposed to an immediate danger. The action is still continuing.

On 14 July 1997 the applicant filed a petition addressed to the Chief Justice of the Wroclaw Regional Court, the Wroclaw-Sródmiescie District Court and the Chief Justice of the Wroclaw-Sródmiescie District Court. He complained that on 12 and 13 July 1997 a flood-wave had inundated the prison building up to the third floor. The light, electricity and sewage systems had been destroyed. There had been no drinking water, food or washing facilities. He and his fellow inmates were kept like animals in unventilated, overcrowded and stinking cells. He asserted that an official tolerance for such a situation amounts to inhuman and degrading treatment.

c. Censorship of correspondence and limitations on contact with his wife

Between 6 December 1995 and 21 July 1997 the applicant sent sixty-one letters to the Commission, out of which forty-six were opened and censored by the Polish authorities before being sent on.

On 9 February 1996 the Secretariat of the Commission sent the applicant a letter containing the application form along with the relevant enclosures. It transpires from the official stamps on the envelope that the letter was delivered to Wroclaw Prison on 4 March 1996, transferred to the Wroclaw Regional Prosecutor on 5 March 1996 and opened and censored by that prosecutor on 6 March 1996. In his letter of 15 April 1996 the applicant expressed to the Commission the fear that he would be unable to submit the application form within the term of six weeks referred to in the letter of 9 February 1996 since the authorities had opened and censored that letter and its delivery was delayed. He also explained that the authorities of Wroclaw prison had refused him their assistance in preparing copies of the relevant documents and that, therefore, he was not able to submit the application within the prescribed time-limit. Finally, he filed the application on 15 March 1996 and sent it, with enclosures, on 15 May 1996. It was delivered to the Commission on 24 May 1996.

On 18 March 1996 the applicant sent a letter to the Wroclaw Regional Bar Council (Okr*gowa Rada Adwokacka). On 20 March 1996 the authorities opened and censored the letter.

On 10 August 1996 the Wroclaw-Sródmiescie District Court ordered that the applicant be deprived of any personal contact with his wife (including by phone), apparently in view of the fact that in the meantime she had been charged in connection with the fraud in which the applicant had also been involved. Before this date no limits had been imposed on the applicant's personal contact with his wife.

On 14 August 1996 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment sent a letter to the applicant. On 28 August 1996 the authorities opened and censored the letter.

On 29 November and 2 December 1996 the applicant sent two letters to the Wroclaw Court of Appeal. On an unspecified date the authorities opened and censored the letters. On 16 January 1997 the applicant sent a letter to his wife. On an unspecified date the authorities opened and censored the letter.

On 30 January 1997 the applicant requested the Wroclaw District Court to grant his wife a permit to visit him in prison as they had had no personal contact since 10 August 1996. The request was dismissed on 7 February 1997 without any reasons being given therefor.

On 7 February 1997 the applicant complained to the Chief Justice of the Wroclaw Regional Court that all his letters to his wife had been not only censored but also intercepted or delayed and that he had not even been permitted to make phone calls to his wife. He submitted that these facts taken together with the absolute prohibition on any personal contact with his wife had amounted to inhuman treatment.

On 10 February 1997 the applicant unsuccessfully requested the Wroclaw-Sródmiescie District Court to stop the censorship of his mail to his wife.

On 24 March 1997 the applicant unsuccessfully requested the court to grant permission for his wife to visit him in prison. On 11 April 1997 he again requested the court to grant such permission, submitting that during the hearing of 10 April 1997 the court had heard evidence

from him and he had explained all the circumstances relating to his wife's charges. The court dismissed the request on 18 April 1997. No reasons for the decision were given.

Subsequently, on 22 and 28 April and 8, 20 and 28 May 1997 the Wroclaw-Sródmiescie District Court, without any indication as to the reasons for its decisions, dismissed five further requests from the applicant to see his wife. The applicant had argued that the prolonged and harsh limits on his contact with his wife were cruel and inhuman and had severely affected his family life. As regards his last request, dated 22 May 1997, he submitted that since the court had heard evidence from his wife on 21 May 1997, there was no further justification for continuing the limitations imposed on their personal contact. He invoked Article 3 and 8 of the Convention in support of his requests.

On 16 June 1997 the Wroclaw-Sródmiescie District Court dismissed further requests by the applicant lodged on 5 and 12 June 1997, holding that the prohibition on any personal contact between him and his wife was justified by the fear that they might induce one another to give false statements before the court or obstruct the due course of the proceedings in any other way.

Relevant domestic law and practice

1. Preventive measures, in particular, detention on remand

The Polish Code of Criminal Procedure lists as preventive measures, inter alia, detention on remand, bail and police supervision. Until 4 August 1996 (i.e. the date on which the Law on Amendments to the Code of Criminal Procedure and Other Criminal Statutes entered into force) detention on remand was imposed by an investigating prosecutor. A detainee could appeal to the court competent to deal with his case against an order for his detention; however, he was not entitled to be brought before a judge, whereas the court examined his appeal in the presence of a prosecutor.

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

> "1. Preventive measures shall be imposed by the court; before a bill of indictment has been lodged with the competent court, the measures shall be imposed by the prosecutor."

According to Section 222 of the Code of Criminal Procedure (in the version applicable at the material time) the prosecutor could order detention on remand for a period not exceeding three months. When, in view of the particular circumstances of the case, the investigations could not be terminated within this period, the detention on remand could, if necessary, be prolonged by the court competent to deal with the case, upon the prosecutor's request, for a period not exceeding one year.

Under Section 209 of the Code of Criminal Procedure preventive measures may be imposed in order to secure the due course of proceedings.

The Code of Criminal Procedure sets out the margin of discretion as to maintaining the specific preventive measure. Detention on remand is regarded as the most extreme among the preventive measures and the domestic law lays down that in principle it should not be imposed if more lenient measures are adequate or sufficient.

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

> "1. A preventive measure shall be immediately quashed or altered, if the basis therefor has ceased to exist or new

circumstances have arisen which justify quashing or replacing a given measure with a more or less severe one."

2. Prosecutor

Chapter III of the Code of Criminal Procedure entitled: "Parties to proceedings, defence counsel, representatives of the victims and representatives of society" describes a prosecutor as a party to criminal proceedings. According to all the relevant provisions of the Code read together, a prosecutor performs investigative and prosecuting functions in the course of criminal proceedings. As regards the general position of the prosecuting authorities, at the material time they were not independent from the executive since the Minister of Justice carried out the duties of the Prosecutor General.

3. Proceedings relating to the lawfulness of detention on remand

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

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

Under Section 88 of the Code of Criminal Procedure the presence of the parties at court sessions other than hearings scheduled in the course of the trial itself was (and still is) a matter for discretion of the court. Court sessions concerning a request for release, a prosecutor's request for prolongation of detention or an appeal against a decision on detention on remand are held in camera. If the defendant requests release in the course of a hearing, the decision on his request may be given either during the hearing or at a subsequent court session. The prosecutor may attend a court session, while the defendant or his counsel may attend such a session only if the law so provides.

At the material time the law did not give the detainee the right to participate in any court session concerning his detention on remand. In practice, the prosecutor was informed of and participated in sessions in camera concerning decisions on detention on remand and submitted arguments before the court. The prosecutor's submissions were included in the record of the session. At present, under the amended provisions of Article 222 para. 4 of the Code, the court imposing detention on remand must hear a suspect and may allow a defence counsel to participate in the court's session concerning the imposition of detention on remand. As regards the other proceedings relating to lawfulness of detention, they are still conducted in the absence of a detainee and his counsel.

4. Legal means of ensuring an accused's presence before a trial court

Under Section 328 of the Code of Criminal Procedure, in the case of an unjustified absence of an accused before a trial court, if his presence is mandatory, the presiding judge shall order him to be brought before the court immediately or adjourn or cancel the hearing. If an accused's presence is not mandatory, the trial court shall hold the hearing in his absence.

5. Censorship of correspondence and contact with the outside world in the course of detention on remand

Sections 82-90 of the Code on the Execution of Criminal Sentences relate to the execution of detention on remand. According to Section 89 para. 2 of the Code a detainee may receive visitors in prison provided that he has obtained permission from an investigating prosecutor (at the investigative stage) or a court competent to deal with his case (once court proceedings have commenced). Further, all correspondence of a detainee is, as a rule, censored, unless a prosecutor or a court has decided otherwise. There is no legal means under the Code for a detainee to contest the censorship of his correspondence.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that the conditions of his detention in Wroclaw Prison taken together with the inappropriate diet, the insufficient medical treatment and severe limitations on his contact with his wife amounted to inhuman treatment contrary to this provision. He also submits that as from 13 July 1997, i.e. when the massive flood inundated the prison, he has been kept in a flooded cell, without sufficient food, drink, medicines, electricity, water or sewerage.

2. Under Article 5 para. 3 of the Convention he complains that:

a) on 22 November 1995 he was detained on remand by a prosecutor who was neither a judge nor an officer authorised by law to exercise judicial power; and

b) his detention on remand from 22 November 1995 until the present day exceeded a "reasonable time" within the meaning of this provision.

3. Further, he submits under Article 5 para. 4 of the Convention that he was not entitled to participate in the proceedings relating to the lawfulness of his detention on remand.

4. The applicant also complains under Article 6 para. 1 of the Convention that the length of the criminal proceedings against him exceeded a "reasonable time" within the meaning of this provision.

5. The applicant complains under Article 6 para. 3 (b) of the Convention that in the course of the criminal proceedings against him he was deprived of his defence rights, in particular in view of the insufficient access to the case-file.

6. He complains under Article 7 para. 1 of the Convention that he was charged with the offence of fraud, which he had allegedly committed in 1994, whereas the substantive legal basis for the charge was provided for by Section 205(1) para. 2 of the Criminal Code which entered into force on 1 January 1995.

7. Under Article 8 para. 1 of the Convention the applicant complains about the censorship of letters to him, in particular those from public authorities, the European Commission of Human Rights and his wife. He also submits that as from August 1996 until the present day he has been deprived of any possible personal contact with his wife.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention that the conditions of his detention in Wroclaw Prison taken together with the inappropriate diet, the insufficient medical

treatment and severe limitations on his contact with wife amounted to inhuman treatment contrary to this provision. He also submits that as from 13 July 1997, i.e. when the massive flood inundated the prison building, he has been kept in a flooded cell, without sufficient food, drink, medicines, electricity, water or sewerage.

The Commission recalls that, according to the Convention organs' case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) of the Convention (Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1979, Series A no. 25, p. 65, para. 162). It also recalls that lack of medical treatment may raise an issue under Article 3 (Art. 3) of the Convention. In such cases, the factors to be considered are the seriousness of the applicant's condition, the quality of medical care he receives and whether his state of health is compatible with detention. Also, there remains the State's obligation to maintain a continuous review of the detention arrangements employed with a view to ensuring the health and well-being of all prisoners, having due regard to the ordinary and reasonable requirements of imprisonment (see Bonnechaux v. Switzerland, Comm. Report 5.12.79, D.R. 18, pp. 100, 148).

As regards the present case, the Commission notes that between 4 December 1995 and the end of 1996 the applicant filed numerous complaints to various national public authorities, alleging that he was not provided with adequate medical care or an appropriate diet in Wroclaw Prison, and that the conditions of his detention were severe and unhygienic. The authorities had ordered inspections of his cell which confirmed that his complaints were, for the most part, unsubstantiated and that, in general, the conditions of his detention did not essentially differ from those in other Polish prisons. Moreover, it cannot be said that the authorities failed carefully to monitor the state of the applicant's health and its compatibility with detention. Thus, in the course of his detention he was examined by medical experts and prison doctors on forty occasions and, subsequently, he received the medical care and food recommended by them.

Insofar as the applicant complains about the conditions of his detention after 13 July 1997, resulting from the massive flood in South-West Poland, the Commission observes that the conditions complained of arose from an unforeseen event, i.e. a natural catastrophe which severely affected the population of Wroclaw as a whole. The Commission also notes that at the same time the Polish authorities commenced an action ameliorating the situation and that the action is still continuing.

Finally, the Commission considers that the limitations on the applicant's personal contacts with his wife, albeit imposed for a considerable time and deepening his isolation from the outside world, did not amount to treatment contrary to Article 3 (Art. 3) of the Convention.

As a consequence, the Commission finds that the treatment complained of did not reach the threshold of severity required to bring it within the scope of Article 3 (Art. 3) of the Convention.

It follows that this part of the application is inadmissible as being 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 length of the criminal proceedings against him exceeded a "reasonable time" within the meaning of this provision.

The Commission recalls that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of

the case and having regard to the following criteria: the complexity of the case, the conduct of the parties and of the relevant authorities (see, inter alia, Eur. Court HR, Monnet v. France judgment of 27 October 1993, Series A no. 273-A, p. 11 et seq. para. 27).

The proceedings in question commenced on 22 November 1995 when the applicant was charged with fraud and are still continuing before the court of first instance, i.e. the Wroclaw-Sródmiescie District Court. They have therefore been pending during one year and eleven months.

The case was, undoubtedly, a complex one. The material contained in the case-file comprised twenty-four volumes, several accomplices were charged together with the applicant and two experts' reports were considered by the court. The investigations lasted approximately ten months, i.e. from 22 November 1995 to 30 September 1996, when the Wroclaw Regional Prosecutor submitted the bill of indictment to the court. This period, in view of the complexity of the case, does not appear excessively long. Furthermore, the Commission does not consider that any substantial delay in the proceedings resulted from the applicant's conduct.

It is true that between 18 December 1996 and 10 April 1997 the court was not able to hold any hearings. However, it was essentially due to the fact that the co-defendants repeatedly failed to appear. On the whole, the Commission considers that the length of the proceedings complained of has not exceeded to date a "reasonable time" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application is inadmissible as being 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. 3 (b) (Art. 6-3-b) of the Convention that in the course of the criminal proceedings against him he was deprived of his defence rights, in particular in view of the insufficient access to the case-file.

Since the requirements of para. 3 of Article 6 (Art. 6-3) are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 para. 1 (Art. 6-1), the Commission will examine the complaints under both paragraphs taken together (see Eur. Court HR, F.C.B. v. Italy judgment of 28 August 1991, Series A no. 208-B, p. 20, para. 29).

However, the Commission has already found that the criminal proceedings against the applicant are still pending. Thus, it observes that, at the present stage of the case, the Commission cannot speculate as to how the applicant's trial will continue, in particular whether, and if so to what extent the access to the case-file granted to him by the court might influence the preparation of his defence. As a consequence, the Commission considers that these complaints are premature.

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

4. The applicant also complains under Article 7 para. 1 (Art. 7-1) of the Convention that he was charged with the offence of fraud, which he had allegedly committed in 1994, whereas the substantive legal basis for the charge was provided for by Section 205(1) para. 2 of the Criminal Code, which entered into force on 1 January 1995.

The Commission recalls that Article 7 para. 1 (Art. 7-1) of the Convention embodies generally the principle that only the law can define a crime and prescribe a penalty and prohibits in particular the

retrospective application of criminal law where it is to an accused's disadvantage (see, Eur. Court HR, G. v. France judgment of 27 September 1995, Series A no. 325-B, p. 38, para. 24).

However, the Commission notes that the applicant's complaint is limited to the charge laid against him and since the criminal proceedings against him are pending and no final judgment has yet been given by the domestic court, it cannot be said that the applicant has been "held guilty of a criminal offence" within the meaning of Article 7 para. 1 (Art. 7-1) of the Convention. The complaint is therefore premature.

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

5. The applicant also complains under Article 5 para. 3 (Art. 5-3) of the Convention that he was detained on remand by a prosecutor who was neither a judge nor another officer authorised by law to exercise judicial power and that the length of his continuing detention exceeded a "reasonable time" within the meaning of this provision; under Article 5 para. 4 (Art. 5-4) of the Convention that he was not entitled to take part in the proceedings concerning the lawfulness of his detention; and under Article 8 (Art. 8) of the Convention about the censorship of his correspondence and the continuing deprivation of any personal contact with his wife;

The Commission considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Commission's Rules of Procedure, to give notice of these complaints to the respondent Government.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaints submitted under Article 5 para. 3 of the Convention that he was detained on remand by a prosecutor who was neither a judge nor an other officer authorised by law to exercise judicial power and that the length of his detention exceeded a "reasonable time" within the meaning of this provision; under Article 5 para. 4 of the Convention that he was not entitled to take part in the proceedings relating to the lawfulness of his detention; and under Article 8 of the Convention about the censorship of his correspondence and the continuing deprivation of any personal contact with his wife;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

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