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. 13425/02
by Sebastian MICHTA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 28 June 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 Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 21 August 2001,

Having regard to the partial decision of 23 March 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 Sebastian Michta, is a Polish national who was born in 1976 and lives in Gliwice, Poland.

A. The circumstances of the case

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

1. The applicant's pre-trial detention and the criminal proceedings against him

On 17 January 2000 the applicant was arrested by the police. On 18 January 2000 he was remanded in custody by the Katowice District Court *(Sąd Rejonowy)* on charges of burglary. The applicant appealed against this decision but his appeal was dismissed on 4 February 2000 by the Katowice Regional Court *(Sąd Okręgowy)*.

On 14 September 2000 the prosecution service closed the investigation in the applicant's case and lodged a bill of indictment against the applicant with the Katowice Regional Court.

On 15 January 2001 the Katowice Regional Court extended the applicant's detention until 15 May 2001. The court considered that it was probable that the applicant had committed the crimes with which he was charged. It also referred to the fact that the case involved twelve accused and thirty-four witnesses. Moreover, the crimes allegedly committed by the applicant carried a heavy sentence and there existed a risk of collusion. Finally, the court was of the view that the applicant's case did not disclose any of the grounds for release from pre-trial detention listed in Article 259 of the Code of Criminal Procedure.

On 15 January 2001 the Katowice Regional Court decided that some of the charges laid against the applicant would be considered in separate proceedings before the Sosnowiec District Court. However, on 21 February 2001 the Katowice Court of Appeal *(Sąd Apelacyjny)* quashed that decision. The appellate court admitted that the number of charges and accused made the applicant's case difficult. At the same time, it pointed out that the trial court had failed to schedule the date of the first hearing despite the fact that five months had passed since the bill of indictment had been lodged with the trial court.

The hearing fixed for 22 March 2001 was cancelled because one of the accused was not escorted from the detention centre to the court.

On 29 March 2001 a hearing was cancelled as several accused were not escorted from the detention centre to the court because of "the lack of escorting facilities".

The hearing scheduled for 18 April 2001 was cancelled because the judge was ill.

On 14 May 2001 the Katowice Regional Court extended the applicant's detention until 15 October 2001. The court considered that the evidence collected in the case sufficiently supported the charges laid against the applicant. Moreover, since the applicant's case had been joined with the case of M.K. it involved twelve accused and thirty-four witnesses. The proceedings in such a case required longer time. The court was not responsible for the fact that it had not begun the consideration of the merits of the case as this delay had been caused by the absence of some of the accused and their counsel at the hearings and the lack of police officers to escort detained accused to the court. The Regional Court further referred to the gravity of the charges laid against the applicant and the fact that they carried a heavy sentence. It considered that the applicant's case did not disclose any of the grounds for release from pre-trial detention listed in Article 259 of the Code of Criminal Procedure and that the applicant could go into hiding or interfere with the proceedings.

The hearing scheduled for 30 May 2001 was cancelled as one of the counsel was absent.

The applicant made a fresh application for release from pre-trial detention but it was dismissed on 25 June 2001 by the Katowice Regional Court. The court considered that the evidence collected in the case made it probable that the applicant had committed the crimes with which he was charged.

On 28 June 2001 the hearing was adjourned after one of the defence lawyers left the hearing room while the bill of indictment was being read.

The hearings scheduled for 19 July, 2 August and 20 September 2001 were cancelled because some of the co-accused failed to appear.

On 8 October 2001 the Katowice Regional Court extended the applicant's detention until 17 January 2002. The court considered that the evidence collected in the case made it probable that the applicant had committed the crimes with which he was charged. The case involved twelve accused and thirty-four witnesses. The trial court had held so far eight hearings. The court further referred to the gravity of the crimes allegedly committed by the applicant and the fact that they carried a heavy sentence. There was also a risk of collusion. In the court's view the applicant's case did not disclose any of the grounds for release from pre-trial detention listed in Article 259 of the Code of Criminal Procedure. The court concluded that the applicant's detention "was necessary in order to secure the proper conduct of the proceedings".

The applicant appealed against the Katowice Regional Court's decision to extend his detention but his appeal was dismissed on 30 October 2001 by the Katowice Court of Appeal. The appellate court gave the following reasons for dismissing the applicant's appeal:

> "Firstly, it should be stated that, contrary to the accused's claims, they committed the crimes with which they are charged. (*Na wstępie stwierdzić należy, wbrew zarzutom oskarżonych, że popełnili oni zarzucane im przestępstwa.*)"

> "The evidence proving this consists not only of the allegations made by P.S. (...) but also those made by R.S. (...) who in the minutes of 16.12.1999 (pages 2513–2515) described the persons with whom he had committed burglaries of warehouses in Olkusz and Lubliniec. Although subsequently on 26.02.2000 (pages 2521-2522) he declared that he had lied, the court will decide which of these testimonies is true.

> It should also be said that the court gave sufficient reasons for continuing the pre-trial detention, in particular not only a possible heavy sentence – listed in Article 258 § 2 of the Code of Criminal Procedure – but also the risk of collusion by putting pressure on the co-accused who made the allegations against them. [They] use in their letters very aggressive words towards him. [There is also the risk of collusion] by going into hiding in order to avoid the penalty. In those circumstances [the court] shares the view of the trial court that only pre-trial detention can secure the proper conduct of the proceedings."

The hearings scheduled for 18 October and 8 November 2001 did not take place as some of the accused could not be escorted to the court building.

On 22 November 2001 the trial court held the first hearing at which the bill of indictment was read and two witnesses were heard.

The hearings listed for 29 November and 20 December 2001 were cancelled as some of the accused failed to appear.

On 28 December 2001 the Katowice Regional Court made a request under Article 263 § 4 of the Code of Criminal Procedure in which it asked the Katowice Court of Appeal to extend the applicant's detention beyond 17 December 2002, when the second year of his detention would end.

On 9 January 2002 the Katowice Court of Appeal allowed the Regional Court's request and extended the applicant's detention until 15 June 2002. The appellate court considered that the evidence collected in the case made it probable that the applicant had committed the crimes with which he was charged. The grounds for his detention listed in Article 258 §§ 1 and 2 of the Code of Criminal Procedure and given in previous decisions continued to exist. In this connection, the court stated that it was not necessary to repeat the grounds for detention given in the previous decisions. Moreover, the appellate court agreed with the Regional Court's submission that the failure to attend hearings by some of the accused and their counsel and the illness of the accused and the judge made it impossible to conclude the proceedings. The Court of Appeal further pointed out that the case was complicated. At the same time, it observed that so far only two accused had been heard and that the trial court had not started to take evidence from the witnesses. The appellate court instructed the trial court to act in the case with due diligence so that the proceedings would end before 15 June 2002.

On 16 January 2002 the Katowice Regional Court rejected the applicant's appeal against the decision of 28 December 2001 to request the extension of his detention, as such appeal was not provided by the law.

On 31 January 2002 the trial court held a hearing at which it heard two accused.

The hearing scheduled for 18 February 2002 was cancelled because the judge was ill.

The applicant made a fresh application for release from detention in which he submitted that he suffered from several illnesses and that he wanted to help his fiancée who was in a difficult situation. On 14 January 2002 the Katowice Regional Court asked the Zabrze Detention Centre to submit a medical opinion concerning the applicant, which would clarify whether he could remain in detention. The Regional Court also asked the probation officer of the Sosnowiec District Court to carry out a background check on the applicant's fiancée.

On 20 February 2002 the Katowice Court of Appeal, sitting in a different composition, dismissed the applicant's appeal against the Katowice Court of Appeal's decision of 9 January 2002 to prolong his pre-trial detention. The court gave the following reasons:

> "The Court of Appeal showed that there existed grounds listed in Article 249 § 1 and Article 258 §§ 1 and 2 of the Code of Criminal Procedure. They have already been described on numerous occasions and it is obvious that they continue to exist. One should only point out that at the present stage of the proceedings the court is not authorised to assess the evidence collected in the case, including the assessment of the truthfulness of the allegations made by the co-accused, as this can be done only at the time of the delivery of the judgment. In order to apply the preventive measures, including the pre-trial detention, the assessment of the evidence under Article 249 § 1 of the Code of Criminal Procedure is limited to verifying whether the collected evidence shows a significant probability that the accused committed the crime. [Therefore] the allegations of the co-accused fulfil this requirement."

The court further stated that it was not convinced by the applicant's arguments concerning the delay in the conduct of the proceedings. It referred to the complexity of the case. The delay was caused by the absence of some of the accused and their counsel at the hearings and the illness of some of the accused and the judge.

On 11 March 2002 the Katowice Regional Court dismissed an application for release from detention lodged by the applicant in January 2002. The court referred to the medical opinion of 24 January 2002 and to the background check carried out on 14 February 2002. It pointed out that the medical opinion stated that the applicant could be treated in the Detention Centre. The applicant's fiancée was in a difficult situation and required hospitalisation. However, the court considered that the applicant's case did not disclose any of the grounds for release from detention listed in Article 259 of the Code of the Criminal Procedure. In addition, the court pointed out that the evidence collected in the case showed that there existed

a significant probability that the applicant had committed the crimes with which he was charged.

Subsequently, the trial court held hearings on 15 and 21 March 2002, at which it heard ten accused. On 11 and 25 April 2002 the court heard 10 witnesses and an accused.

On 20 May 2002 the Katowice Regional Court made a request under Article 263 § 4 of the Code of Criminal Procedure in which it asked the Katowice Court of Appeal to extend the applicant's detention until 1 October 2002.

On 29 May 2002 the Katowice Court of Appeal allowed the request submitted by the Regional Court and extended the applicant's detention until 1 October 2002. The appellate court first pointed out that numerous hearings had been cancelled for the reasons for which the trial court was not responsible i.e. the absence of the counsel and the accused who had not been detained, as well as the failure of the police to escort the accused remanded in custody to the court. Furthermore, the appellate court was of the view that there existed a significant probability that the applicant had committed the crimes with which he was charged. The case involved twelve accused and numerous witnesses and was therefore complicated. The court also referred to the gravity of the charges and the fact that they carried a heavy sentence. The applicant's detention "was necessary to secure the proper conduct of the proceedings".

Subsequently, the applicant applied for bail but his application was dismissed on 10 June 2002 by the Katowice Regional Court. The court gave the following reasons for its decision:

> "Contrary to the applicant's claims, the grounds for his detention still exist. He is still a flight risk and is charged with the commission of an act which carries a heavy prison sentence. The reasons for release from detention given by the applicant cannot justify his release from pre-trial detention under Article 259 of the Code of Criminal Procedure. Therefore, considering that detention is necessary to secure the proper conduct of the proceedings, it was decided as in the operative part."

The applicant appealed against this decision but his appeal was dismissed on 24 July 2002 by the Katowice Court of Appeal.

On 16 September 2002 the Katowice Regional Court made a request under Article 263 § 4 of the Code of Criminal Procedure in which it asked the Katowice Court of Appeal to extend the applicant's detention until 4 November 2002.

On 25 September 2002 the Katowice Court of Appeal allowed the request submitted by the Regional Court and extended the applicant's detention until 4 November 2002. The appellate court referred to the grounds for detention given in the previous decisions dismissing applications for release and extending the applicant's detention. It considered that the trial court's inability to speedily conduct the proceedings had resulted from reasons for which the trial court was not responsible. In

addition, it was still necessary to take evidence from witnesses held in different prisons and from an expert witness. In conclusion, the Court of Appeal referred to Article 264 § 4 of the Code of Criminal Procedure and stated that the case was very complicated and required further taking of evidence.

On 18 October 2002 the Katowice Regional Court made a request under Article 263 § 4 of the Code of Criminal Procedure in which it asked the Katowice Court of Appeal to extend the applicant's detention until 20 December 2002.

On 30 October 2002 the Katowice Court of Appeal dismissed an appeal lodged by the applicant against the decision of 25 September 2002. The appellate court considered that the evidence collected in the case made it probable that the applicant had committed serious crimes. The applicant could receive a heavy sentence of imprisonment and it was necessary to secure the proper conduct of the criminal proceedings against him. Moreover, the court referred to the grounds for detention listed in the previous decisions extending the applicant's detention. The case did not disclose any delay which could be attributed to the trial court. Finally, there did not exist any grounds for release from detention listed in Article 259 of the Code of Criminal Procedure.

On 30 October 2002 the Katowice Court of Appeal allowed the request made by the Katowice Regional Court on 18 October 2002 and extended the applicant's pre-trial detention until 20 December 2002. The evidence collected in the case made it probable that the applicant had committed the crimes with which he was charged. He could receive a heavy prison sentence and his case did not disclose any grounds for release from detention listed in Article 259 § 1 of the Code of Criminal Procedure. Finally, the proceedings did not disclose any delay which could be attributed to the trial court.

Between 16 May and 3 December 2002 the trial court held in total ten hearings.

On 10 December 2002 the Katowice Regional Court convicted the applicant and sentenced him to eight years and six months' imprisonment. On the same day it prolonged the applicant's detention until 20 March 2003.

On 10 March 2003 the Katowice Regional Court extended the applicant's detention until 20 June 2003.

On 19 March 2003 the prosecution service lodged with the Katowice Court of Appeal an appeal against the part of the trial court's judgment in which it acquitted the applicant of some of the charges. Subsequently, the applicant lodged an appeal against his conviction.

On 10 June 2003 the Katowice Court of Appeal extended the applicant's detention until 20 September 2003. The applicant appealed against this decision but his appeal was dismissed on 9 July 2003.

On 10 September 2003 the Katowice Court of Appeal extended the applicant's detention until 20 December 2003.

During the hearing held on 23 October 2003 the Katowice Court of Appeal delivered a judgment in which it upheld the applicant's conviction and sentence.

On 19 January 2004 the applicant received a reasoned copy of the judgment of 23 October 2003.

On 29 March 2004 the President of the Katowice Court of Appeal appointed a lawyer for the applicant with the purpose of lodging on his behalf a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

The applicant lodged a cassation appeal. On 9 June 2004 the Katowice Court of Appeal transmitted his cassation appeal to the Supreme Court.

On 13 October 2004 the Supreme Court dismissed his cassation appeal as manifestly ill-founded.

2. The complaint about the unreasonable length of the proceedings

On 2 December 2004 the applicant lodged with the Katowice Court of Appeal a complaint alleging that his right to have his case examined within the reasonable time had been breached. He relied on the 2004 Act on complaints about a breach of the right to a trial within a reasonable time.

On 16 February 2005 the Katowice Court of Appeal dismissed his complaint. The court examined the course of the impugned proceedings and found no delays on the part of the trial court. Furthermore, it found that the case was particularly complex since it concerned charges of robbery and theft directed against twelve co-accused.

3. The monitoring of the applicant's correspondence

On 12 March 2002 the Court received the applicant's letter of 25 February 2002 mailed on 27 February 2002. The envelope in which the letter was delivered bears the following stamps: "254 Received on 25.02.02" (*254 Wpłynęło dnia 25.02.02*) and "Censored, signature" (*Ocenzurowano, podpis*), and an illegible signature. One side of the envelope was opened and sealed with sellotape.

B. Relevant domestic law

1. Preventive measures, including detention on remand

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:

> "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 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 justified fear 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 margin of discretion as to 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 the 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 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, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, and 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.

2. The remedy for unreasonable length of proceedigns[1]

On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings.

Section 2 of the 2004 Act reads, in so far as relevant:

"1. Parties to proceedings may lodge a complaint that their right to a trial within a reasonable time has been breached [in the proceedings] if the proceedings in the case last longer than is necessary to examine the factual and legal circumstances of the case ... or longer than is necessary to conclude enforcement proceedings or other proceedings concerning the execution of a court decision (unreasonable length of proceedings)."

Section 5 reads, in so far as relevant:

"1. A complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. ..."

Section 12 provides for measures that may be applied by the court dealing with the complaint. It reads, in so far as relevant:

1. For a more detailed rendition of the relevant domestic legal provisions see *Michalak v. Poland* (dec.), no. 24549/03, §§ 12-23, to be published in ECHR 2005-... – also available on the Court's Internet site (http://www.echr@coe.int).

"1. The court shall dismiss a complaint which is unjustified.

2. If the court considers that the complaint is justified, it shall find that there was an unreasonable delay in the impugned proceedings.

3. At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a fixed time-limit. Such instructions shall not concern the factual and legal assessment of the case.

4. If the complaint is justified the court may, at the request of the complainant, grant ... just satisfaction in an amount not exceeding PLN 10,000 to be paid by the State Treasury. If such just satisfaction is granted it shall be paid out of the budget of the court which conducted the delayed proceedings."

Section 18 lays down transitional rules in relation to the applications already pending before the Court. It reads, in so far as relevant:

"1. Within six months after the date of entry into force of this law persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.

..."

On 18 January 2005 Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Act produced legal effects as from the date of its date of entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date and had not yet been remedied.

3. Censorship of correspondence

(a) The Code of Execution of Criminal Sentences 1997

Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) ("the 1997 Code") which entered into force on 1 September 1998.

The relevant part of Article 103 § 1 of the Code provides as follows:

"Convicts (...) have a right to lodge complaints with institutions established by international treaties ratified by the Republic of Poland concerning the protection of human rights. Correspondence in those cases (...) shall be sent to the addressee without delay and shall not be censored."

Article 209 provides:

"The provisions concerning the execution of sentences shall apply accordingly to the execution of detention on remand, subject to changes resulting from this chapter."

Article 214 § 1 reads as follows:

"Unless exceptions are provided for in the present Chapter, a detainee shall enjoy at least the same rights as are secured to a convicted person serving a sentence of imprisonment under an ordinary regime in a closed prison. No restrictions shall be applied to him except such as are necessary to secure the proper conduct of criminal proceedings, to maintain order and security in a remand centre and to prevent demoralisation of detainees."

Article 217 § 1 reads, in so far as relevant, as follows:

"(...) detainee's correspondence shall be censored by [the organ at whose disposal he remains], unless the organ decides otherwise."

Article 242 § 5 reads as follows:

"The prohibition of censorship shall also mean the prohibition of acquainting oneself with the content of the letter."

(b) The Rules of Detention on Remand 1998

On 1 September 1998 the Rules of Detention on Remand (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu wykonywania tymczasowego aresztowania*) entered into force.

§ 36 of the Rules provides:

"The detainee's correspondence, including correspondence with the international institutions for the protection of human rights, which act on the basis of international agreements ratified by the Republic of Poland, with the Ombudsman and public and local government institutions, is mailed through the intermediary of the organ at whose disposal he remains."

§ 37 provides:

"1. If the organ at whose disposal [a detainee] remains ceases to censor correspondence, it shall be subject to the supervision or censorship by the prison administration, except for cases referred to in Article 73 of the Code of Criminal Procedure and Articles 102 (11) and 103 of the Code [of Execution of Criminal Sentences].

2. The correspondence of a detainee shall be supervised by the administration of the detention centre when necessary in the interest of protecting social interest, the security of a detention centre or requirements of personal re-education.

3. The supervision referred to in paragraph 2 shall be executed by controlling the content of the correspondence and acquainting oneself with its wording.

4. The correspondence referred to in Articles 8 § 3, 102 (11) and 103 § 1 of the Code [of Execution of Criminal Sentences] may only be subjected to the control of its content, which shall take place in the presence of a detainee."

§ 38 provides:

> "1. Detainee's correspondence shall be censored or seized by the prison administration in the case referred to in Article 105 § 4 of the Code [of Execution of Criminal Sentences].
>
> 2. Censorship shall mean deleting a part of text or making it illegible, whereas seizing correspondence shall mean not transmitting it to a detainee and placing it in his file.
>
> 3. The decision to censor or to seize correspondence shall be taken by a Governor, who shall inform a detainee about the reasons for censorship or for seizure.
>
> 4. For controlling purposes a copy of the correspondence before it was censored shall be placed in the detainee's personal file; if the detainee consults the file, copies of the correspondence before it was censored and the seized correspondence shall not be made available [to him]."

COMPLAINTS

1. The applicant complained about a violation of Article 5 § 3 of the Convention. He submitted that his detention lasted too long.

2. He also complained about a violation of Article 6 § 1 of the Convention on the account of the unreasonable length of the criminal proceedings.

3. With respect to the monitoring of the applicant's correspondence, the Court raised *ex officio* complaints about a breach of Article 8 (right to respect for correspondence) and Article 34 (effective exercise of the right to file individual applications).

THE LAW

1. Under Article 5 § 3 of the Convention the applicant complained that the length of his pre-trial detention had exceeded a "reasonable time".

Article 5 § 3 reads, in so far as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The applicant agreed that his pre-trial detention was initially justified by reasonable suspicion that he had committed the offence with which he was charged. However, with the lapse of time it could not justify his prolonged detention. The grounds given in the decisions prolonging his detention were not relevant and sufficient. In this connexion he averred that in reality there

had been no risk of his obstructing the proceedings, which had been confirmed by the Court of Appeal, despite the fact that this argument had been repeated in many of the decisions. The applicant further submitted that the conditions for imposing the detention contained in Code of Criminal Procedure were worded too vaguely and therefore they were applicable to almost every case.

The applicant also argued that the courts were not diligent in examining his case and that his case had not been particularly complex.

The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It lasted from 18 January 2000 to 10 December 2002 and was justified by "relevant" and "sufficient" grounds. One of those grounds was the risk that the applicant might interfere with the course proceedings. The charges laid against him carried out a severe penalty.

The Government further submitted that the domestic courts acted diligently and speedily, in particular taking into account the complexity of the case.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complained that the length of the criminal proceedings in his case had been unreasonable in breach of Article 6 § 1 of the Convention. This Article reads as follows:

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

The applicant submitted that the length of his case exceeded the reasonable time. He stressed that the case had not been particularly complex and that he had not contributed to its length. He submitted that the domestic courts had been responsible for the delay; they had proceeded slowly and without diligence. According to the applicant, his case was an example of a general problem of inefficiency of the Polish courts.

The Government stressed that the length of the proceedings in the case had not exceeded a reasonable time. In particular they referred to the unusual complexity of the case and the diligent conduct of the domestic authorities. They averred that there had been no unnecessary delays attributable to the courts.

The Court first observes, with respect to the requirement of exhaustion of the domestic remedies, that the applicant made use of the remedy provided for by the 2004 Act and lodged a complaint about the unreasonable length

of the proceedings in his case. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

Accordingly, the Court finds that the applicant exhausted domestic remedies in respect of his complaint under Article 6 § 1 of the Convention.

As regards the reasonableness of the length of proceedings, the Court reiterates that it must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The proceedings in the present case lasted from 17 January 2000, when the applicant had been arrested by the police, until 13 October 2004, when the Supreme Court had dismissed his cassation appeal. It follows that the overall length of the proceedings was four years and nine month. During this period the case had been examined at three instances, including the cassation stage before the Supreme Court.

Considering the nature of the case the Court accepts the Government's argument that the case was a complex one. It concerned numerous charges of robbery and theft against ten accused which required the Regional Court to take evidence from about 100 witnesses.

With regard to the conduct of the domestic authorities, the Court notes that after the indictment of the applicant, on 14 September 2000, the trial court had not scheduled a hearing until 22 March 2001. Nevertheless, the Court observes that during that time the Regional Court did not remain completely inactive as it had taken a procedural decision concerning the reassignment of some charges against the applicant to another set of proceedings. After the appellate court quashed that decision, the trial court listed ten hearings, but had to cancel them because of the absence of the accused or their counsel. That being so the trial court cannot be held entirely responsible for the initial procrastination in the proceedings. Following 22 November 2001, the determination of the charges against the applicant and the obtaining of the evidence proceeded without any impediment. Hearings were listed and held at regular intervals; the Regional Court held about eighteen hearings during the period of one year. The Court further finds that there were no apparent periods of inactivity before the appellate court or the Supreme Court.

In consequence, the Court considers that in the particular circumstances of the instant case, the length of proceedings did not exceed a reasonable time.

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

3. The applicant further submitted that the authorities had interfered with the right to respect for his correspondence, contrary to Article 8 of the Convention. This Article, in its relevant part, reads:

> "1. Everyone has the right to respect for his ... correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicant argued that his correspondence with the Court must have been censored as his letter had been stamped by the Polish authorities. He submitted that the Government's explanations were naïve and cynical. With regard the Government's doubt as to who had stamped his letter to the Court, the applicant noted that in any event the Polish State was responsible for guaranteeing the respect for his rights.

The Government submitted that the case did not disclose a breach of Article 8 because there was no evidence that the applicant's correspondence with the Court had been censored. In this connection they argued that it could not be established "who, when and why put such a stamp and signature on the Xeroxed envelope." The Government agreed that, if the Court considered the applicant's letter had been censored by the authorities, the censorship of the detained persons, as well as convicted prisoners, with the European Court of Human Rights was contrary to the domestic legislation. They referred to Article 103 of the Code of Criminal Procedure 1997, which expressly relates to convicted persons and Article 214 of the 1997 Code according to which the persons detained on remand should enjoy the same rights as those convicted by a final judgment.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. As regards the control of the applicant's correspondence, the Court, having regard to Articles 1 and 34 of the Convention, also considered it appropriate to raise *ex officio* the issue of Poland's compliance with Article 34 of the Convention. Article 34 reads:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Government, referring to the arguments that they submitted in the context of the complaint under Article 8, maintained that the Polish authorities had not interfered with the applicant's right of individual petition.

The applicant appeared to agree with the Government's submission and did not plead a breach of Article 34.

In the circumstances, the Court does not consider it necessary to pursue an examination of the issue under Article 34 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the length of his pre-trial detention and censorship of his correspondence with the Court;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President