AS TO THE ADMISSIBILITY OF

Application No. 27914/95
by Piotr MIKULSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

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 14 November 1994 by Piotr MIKULSKI against Poland and registered on 20 July 1995 under file No. 27914/95;

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 1954, is currently imprisoned in Bialol*ka prison.

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

On 7 September 1993 the Warsaw - Praga Pólnoc Public Prosecutor instituted criminal proceedings against the applicant. At an unspecified later date the Public Prosecutor detained the applicant on remand on suspicion of robbery and assault, committed in August 1993.

On 21 February 1994 the applicant was placed in a psychiatric hospital for observation. He remained there until 10 May 1994.

In a letter of 1 June 1994, in reply to the Ombudsman's inquiry about the conduct of the proceedings, the Praga Pólnoc District Prosecutor stated that the psychiatric observation had been completed but the relevant expert opinion had not been prepared yet. Immediately after the opinion was ready, the investigations would be terminated and the bill of indictment lodged with the court. The applicant's allegations about the unfairness of the investigations were, in the Prosecutor's opinion, unfounded and motivated by the applicant's wish to avoid criminal responsibility.

In a letter of 9 June 1994 the Warsaw District Bar replied to the applicant's complaint concerning lack of diligence on the part of the officially appointed lawyer and stated that there were no grounds for finding that he lacked diligence.

Apparently in June 1994 the investigations were completed and the Public Prosecutor prepared the bill of indictment.

In a letter of 29 July 1994, in reply to the applicant's complaint about the length of the proceedings, the Ombudsman stated that the indictment would soon be lodged with the court. He further stated that the applicant had undergone six weeks of psychiatric observation, prolonged for further six weeks as he had refused to cooperate with the physicians.

On 11 August 1994 the Warsaw Regional Court (S*d Wojewódzki) dismissed the applicant's request for release, considering that there were sufficient grounds for reasonable suspicion that he had committed a serious offence, supported in particular by the evidence given by the victim.

On 22 August 1994 the applicant complained to the Warsaw Regional Court about the delay in the proceedings. In reply the Court informed the applicant on 29 August 1994 that the dates of hearings were fixed following the chronological order in which the cases had been filed with the Court.

On 22 September 1994 the Warsaw Court of Appeal (S*d Apelacyjny) dismissed the applicant's appeal against the decision of 11 August 1994, considering that the lower Court was right in finding that there were grounds for reasonable suspicion against the applicant, including the evidence given by the victim and the witnesses. The serious character of the offence also justified continuation of the applicant's detention.

On 27 December 1994 the applicant complained to the Warsaw Regional Court of the length of the criminal proceedings.

On 5 January 1995 the Court informed the applicant that the first hearing could be held in June 1995.

On 9 October 1995 the Warsaw Regional Court refused to release the applicant from detention on remand. The Court reiterated that there were sufficient grounds for reasonable suspicion that the applicant had committed the offence concerned. Efforts had been made by the Court to ensure that the witnesses, who had apparently failed to appear, would be present at the next hearing.

COMPLAINTS

The applicant complains under Article 5 paras. 3 and 4 of the Convention about the excessive length of his detention.

He further complains under Article 6 of the Convention of the length of the proceedings. He submits that he is not guilty and that the proceedings so far were unfair in that the Public Prosecutor refused to hear certain witnesses. He further alleges that his officially appointed lawyer did not act with diligence when representing him in the investigation.

The applicant complains under Article 13 of the Convention that he does not have any effective remedy at his disposal to complain about the length of the proceedings.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the

Convention that the criminal investigations against him were unfair.

The Commission recalls that the conformity of a trial with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention must be assessed on the basis of the trial as a whole (No. 9000/80, Dec. 11.3.82, D.R. 28, p. 127). However, the Commission notes that in the present case the criminal proceedings against the applicant are still pending. The complaint is therefore premature.

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

2. The applicant further complains under Article 5 paras. 3 and 4 (Art. 5-3, 5-4) of the Convention about the excessive length of his detention and under Article 6 of the length of the proceedings. The applicant also complains under Article 13 (Art. 13) of the Convention that he does not have any effective remedy at his disposal to complain about the length of the proceedings.

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

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaints concerning the length of the detention and of the criminal proceedings and lack of an effective remedy in this respect;

DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber