CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 29537/95 and 35453/97
by Zbigniew RADAJ
against Poland

The European Court of Human Rights, sitting on 21 March 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above applications lodged with the European Commission of Human Rights on 16 February 1994 and 4 October 1996, and registered on 13 December 1995 and 27 March 1997, respectively,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the applications was transferred to the Court,

Having regard to the partial decision of 14 October 1999,

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, Zbigniew Radaj, is a Polish national, who was born in 1953 and lives in Warsaw.

A. The circumstances of the case

1. The applicant's detention in a psychiatric hospital

a) Proceedings concerning charges of insults of and uttering threats against judges and prosecutors

i) On unspecified dates, apparently in 1989 or 1990, and again later in 1993, the Warsaw District Court convicted the applicant of insulting judges and of uttering threats and imposed sentences on him.

ii) On an unspecified date criminal proceedings were instituted against the applicant on suspicion of uttering threats against judges and prosecutors.

On 24 January 1996 the Warszawa-Wola District Prosecutor discontinued the investigations against the applicant on suspicion of insulting judges and prosecutors, i.e. of having committed an offence provided for in Article 236 of the Criminal Code, having regard to a psychiatric expert opinion according to which the applicant could not be held criminally responsible on psychiatric grounds. The prosecutor decided to request the court to give an order for the applicant's committal to a psychiatric hospital under Article 99 of the (old) Criminal Code.

On 22 February 1996 the applicant lodged an appeal against this decision, arguing that the medical opinion was entirely false and aimed only at obstructing his legitimate fight for justice against a corrupt judicial system.

In April 1996 the applicant's psychiatric examination as an out-patient was ordered by the Warsaw District Court. The applicant refused to co-operate with the psychiatrists.

On 15 May 1996 the applicant's lawyer requested the court to stay the proceedings until a final judgment would be given in other criminal proceedings in which the applicant had been charged with persistent failure to pay child support (see below). It was recalled that in the latter proceedings the Warsaw District Court had on 19 February 1996 ordered the applicant's committal to a psychiatric hospital, pursuant to Article 99 of the Criminal Code. These proceedings were apparently pending before the appellate court. It was argued that the final outcome of those proceedings was of paramount importance for the proceedings concerned.

On 24 June 1996 the applicant requested that presiding judge L.T. step down, alleging that she was biased, as shown in particular by the fact that she

had opened and read the applicant's correspondence with the European Commission of Human Rights.

On 12 July 1996 the applicant refused to consent to a psychiatric examination.

On 15 July 1996 the applicant again complained to the President of the District Court about the manner in which the judge was proceeding in the case and requested to be examined by reliable psychiatrists.

Apparently the applicant's request to stay the proceedings was unsuccessful.

On 19 August 1996 the applicant was committed to a psychiatric hospital under a court order of 25 July 1996, given in another set of proceedings (see *b*) below).

On 9 September 1996 the Warsaw District Court dismissed the applicant's motion for judge L.T. to step down. On 28 September 1996 the applicant lodged an appeal against this decision, submitting in particular that the judge had opened his mail from the European Commission of Human Rights, which was in breach of the Convention and which showed manifestly that she was biased against him.

On an unspecified date in October 1996, the court ordered the applicant to undergo an observation in a psychiatric hospital in order to assess whether the requirements for his psychiatric internment were met. The applicant lodged an appeal against this decision, which was rejected on 30 October 1996 as no appeal lay against this decision.

On 15 November 1996 the observation of the applicant started in the Pruszków-Tworki psychiatric hospital, where he had been placed on 19 August 1996 (see above).

On 27 December 1996 the applicant requested the court to admit as evidence a further expert opinion of psychiatrists, who would assess whether medical expert reports, prepared in the criminal case concerning the charges of his failure to pay child support, were reliable.

On 21 January 1997 the applicant's psychiatric observation was terminated.

In a psychiatric opinion of 30 January 1997, numbering twelve pages, prepared by three psychiatrists and two psychologists following his observation, it was stated that he had alleged that in the divorce proceedings he had been a victim of conspiracy against him. He had manifested a querulous and paranoid attitude. However, whereas it was true that the applicant could be difficult in contacts, he had never been violent. He had proffered insults, but this should be regarded as having a demonstrative character only. There were no signs that he had intended to behave violently.

The applicant was ultimately discharged from the hospital on 17 February 1997 (see *b)* below).

On 21 March 1997 the applicant requested the court to assign a lawyer paid from the legal aid scheme to represent him in the case, in view of the fact that he had revoked the power of attorney of advocate H. W.-K., who had been

representing him. Apparently the court granted his request. On 15 May 1997 the applicant complained to the court, alleging that lawyer J.V. had failed in his duty to represent him effectively, and requested the court to assign a new lawyer to the case.

On 24 June 1997 the applicant complained to the Minister of Justice, alleging procedural irregularities committed in connection with his appeal of 22 November 1996 against a decision of 30 October 1996 by which the court had rejected his appeal against a decision to place him for observation in a psychiatric hospital.

On 12 August 1997 the Warsaw Regional Court declined to entertain the applicant's appeal against the decision of 30 October 1996, considering that in any event the appeal had become devoid of purpose, the applicant's observation having been terminated on 21 January 1997.

b) Criminal proceedings concerning charges of persistent failure to pay child support

On an unspecified date criminal proceedings were instituted against the applicant on charges of persistent failure to pay child support. On 7 March 1995 the applicant was remanded in custody and apparently later released. In an opinion of 18 April 1995 a psychiatrist, who had examined him on 14 April 1995, stated that he should undergo a hospital observation in order to establish whether he could be held criminally responsible, having regard in particular to the fact that the applicant had refused to reply to all questions. It was further stated that the contents of the applicant's numerous letters to various authorities had given rise to doubts as to his mental state.

On 15 May 1995 the Warsaw District Court decided to admit medical expert evidence in order to establish whether the applicant could be criminally responsible. On 2 June 1995 the court allowed the request of the experts to order the applicant's observation in a hospital, in order for the report to be prepared. On 1 August 1995 the applicant was placed in the Department of Psychiatry of the Prison hospital in Warsaw for the purposes of observation which lasted until 13 November 1995.

In a medical opinion, numbering sixteen pages, prepared following the hospital observation, the psychiatrists had regard to the applicant's behaviour before his admission to the hospital, and in particular to the contents of numerous letters which he had been sending to various institutions. He had been repeatedly alleging therein that he was persecuted, and proffering insults against all authorities involved in his case. The experts also examined the case-files of the divorce proceedings and of another criminal case against the applicant. It was further noted that the applicant had manifested pathological reactions in that he interpreted all events as systematic persecution. He had also been pathologically jealous. The experts stated that the applicant suffered from a long-term paranoid reaction, which made it impossible for him to

appreciate properly the consequences of his acts. In conclusion, it was stated that his remaining at liberty could pose a serious threat to public order.

On 19 February 1996 the Warsaw District Court acquitted the applicant of charges of persistent failure to comply with his obligations to pay child support, considering that he could not be held criminally responsible on medical grounds. The court, having regard to the medical opinion of psychiatrists J.C. Z., J.M. and S.G., committed the applicant to a psychiatric mental hospital, pursuant to the provisions of Article 99 of the Criminal Code. The court noted that the experts had prepared their opinion on the basis of the case-file of the divorce proceedings and the present criminal case. They had regard to the applicant's written pleadings contained in these files, in which the applicant had often insulted various persons involved in the proceedings in their official capacity. They also contained threats.

The court took into consideration the experts' conclusion that the applicant suffered from paranoid reaction as shown by numerous letters he had been sending to various State authorities, alleging corruption on the part of many authorities and stating that he was a victim of universal conspiracy. The court had also regard to the fact that the applicant had in the past been convicted of insulting a judge and of proffering threats against a judge. The court further concluded that, in the light of the experts' opinion, which was exhaustive, logical and conclusive, the applicant posed a threat to public order and that, therefore, the conditions laid down in Article 99 of the Criminal Code were met.

The applicant's officially assigned lawyer lodged an appeal against this decision. On 29 April 1996 the applicant submitted his complementary pleadings to the court. On 25 July 1996 the Warsaw Regional Court upheld the contested decision.

On 29 July 1996 the applicant requested the Minister of Justice to lodge a cassation appeal against this judgment. On 4 September 1996 the Minister of Justice refused to do so, considering that the judgment was in conformity with the law and that the court, in the assessment of ample medical evidence gathered in the proceedings, did not overstep the limits of its appreciation set out by law.

On 19 August 1996 the applicant was placed in Pruszków Tworki hospital under the final decision on his committal, given on 25 July 1996 by the Warsaw Regional Court.

On 21 November 1996 the applicant's lawyer lodged a cassation appeal with the Supreme Court against the decision of 25 July 1996, which had been served on her on 20 November 1996.

On 31 January 1997 four specialists from the Pruszków Tworki hospital, three psychiatrists and one psychologist, stated in their opinion, numbering sixteen pages, that the applicant's condition had improved. They recalled the opinion, which had served as a basis for the applicant's internment. They also recalled the circumstances of the applicant's stay in the hospital. It was

emphasised that at the beginning he had felt victimised by the administration of justice which had been acting in conspiracy against him. They emphasised that he had never been physically violent against anybody.

It was further observed that, despite the fact that no pharmacological treatment had been applied, the applicant had gradually abandoned his paranoid reactions, and was able to admit that his reactions in the past had been exaggerated and inadequate. He was also able to acknowledge that his proffering insults and defiant behaviour towards the courts was a mistake. It was concluded that the applicant could be discharged from the hospital.

On 6 February 1997 the Warsaw District Court decided that, in view of the medical expert opinion of 31 January 1997, the applicant's current condition was such as to warrant a conclusion that he had ceased to pose a threat to public order, and ordered his discharge**.** The applicant was ultimately discharged from the hospital on 17 February 1997.

Subsequently, on 9 December 1997, the applicant's lawyer, acting on instructions, which the applicant had meanwhile been changing several times, had withdrawn the cassation appeal from the Supreme Court. Apparently the applicant changed his mind again later on and in a letter to the Warsaw Bar Council of 30 December 1997 complained that the lawyer had overstepped the limits of his power of attorney and had acted in breach of his professional obligation.

Finally, by a judgment of 14 January 1998 the Supreme Court amended the contested decisions of 19 February 1996 and 25 July 1996 in that it set them aside in their part concerning the order to commit the applicant to a psychiatric hospital. The court stated that the lower courts had failed to take into consideration the nature of the offence committed by the applicant. The fact that the offence had not been of a violent character should have had a bearing on their reasoning. In the assessment of the medical expert opinions which served as a basis for their decisions, they had not taken into consideration the nature and clinical manifestations of the applicant's mental disturbance. The courts in their decisions had failed to refer to the circumstances capable of substantiating their conclusion that the applicant's remaining at liberty would entail a serious threat to public order. In particular, it had not been demonstrated with sufficient clarity why the courts had considered that such a threat in the applicant's case would indeed be serious, as required by Article 99 of the Criminal Code. In this connection, the court referred to the applicant's voluminous correspondence with various authorities and to the allegations and insults contained therein. It stressed that, whereas it was true that the applicant had certainly manifested a querulous attitude, he had on no occasion resorted to physical violence. Therefore there were no sufficient grounds for the conclusion that, had he remained at liberty, he would indeed have become dangerous to others. The court emphasised that the applicant's conduct could eventually warrant a medical intervention, but not an application of a penal measure, involving deprivation of liberty.

On an unspecified later date the applicant instituted proceedings in which he claimed compensation for his unjustified psychiatric detention. These proceedings are currently pending before the Warsaw Regional Court.

2. The applicant's correspondence with the organs of the European Convention of Human Rights

Two letters from the Secretariat of the European Commission of Human Rights, posted on 20 March 1996 and on 14 May 1996, were intercepted, opened and read by the administration of Warszawa-Służewiec, where the applicant was detained on remand, and by the Warsaw District Court, before which criminal proceedings against the applicant were pending at that time.

On 29 April 1996 the applicant requested the President of the Warsaw District Court to explain what was the legal basis on which the court opened and read his correspondence with the European Commission of Human Rights.

He reiterated his complaint on 31 July 1996. In reply, on 15 October 1996 the President of the Regional Court informed him that Article 8 of the Convention did not prohibit censorship of correspondence of persons detained on remand, which was also permitted under Section 33 § 2 of the Rules of Detention on Remand. The correspondence sent to the European Commission of Human Rights fell within the scope of this provision. It was further stated that the text of the Convention does not contain provisions relating to the inviolability of the correspondence to and from the European Commission of Human Rights, also as regards the judicial authorities.

B. Relevant domestic law

a) Committal to a psychiatric hospital

Conditions for the detention of persons of unsound mind who were not criminally responsible on medical grounds were laid down in the Polish Criminal Code, as it stood at the material time:

Article 99:

> "If it has been established that a person has committed an offence in a state of mental disorder [excluding his criminal responsibility], and his remaining at liberty entails a serious danger to public order, the court shall commit him to a mental hospital or another appropriate institution."

Article 101:

> "In cases provided for in Article 99 ... the period of detention is not determined in the decision of committal to the psychiatric institution; the court shall order release if the detention ceases to be necessary."

According to the case-law of the Polish Supreme Court, a threat to public order was to be determined on the basis of the situation obtaining at the time when the offender's detention in the psychiatric institution is imposed. The

assessment of the existence and the degree of such threat should be made in the light of an expert medical opinion. For a decision ordering detention in a psychiatric hospital to be given, it was not necessary that the expert medical opinion should state expressly that public order would be threatened if the offender were to remain at liberty. It sufficed that such a conclusion could be drawn from the expert medical opinion taken as a whole (*Orzecznictwo Sądu Najwyższego, Izba Karna i Wojskowa* 1974, item 47). A threat to public order was considered serious if an offender's remaining at liberty gave rise to a risk that he might commit an unlawful act (*Orzecznictwo Sądu Najwyższego, Izba Karna i Wojskowa* 1972, item 183).

b) Correspondence of persons detained on remand with the Convention organs

The situation of persons detained on remand was at the relevant time governed by the Code of Execution of Criminal Sentences of 1969. Under Article 89, all correspondence of a detainee was to be opened, read and, if need be, subject to censorship, unless a prosecutor and a court decided otherwise. No provision of the Code provided for any remedy to contest the manner or scope of the censorship of a detainee's correspondence.

The rights of persons detained on remand as regards their correspondence were further set out in Rule 33 of the Rules on Detention on Remand. They provided that the correspondence of persons detained on remand was subject to censorship by the authority conducting the criminal proceedings, i.e. either a public prosecutor or a court, depending on the stage reached in the proceedings.

On 6 July 1997 a new Code of Enforcement of Criminal Sentences was enacted by parliament. Article 102 of this Code, which entered into force on 1 January 1998, provides that the convicted persons are entitled to uncensored correspondence with the State authorities and with the Ombudsman. Article 103 of the Code further provides that convicted persons and their lawyers may lodge complaints with the international agencies established under international treaties on protection of human rights, ratified by Poland. Prisoners' correspondence in such cases shall be dispatched with no delay and is not subject to censorship.

Pursuant to Article 512 of the new Code, the rights of persons detained on remand shall, in principle, be at least equal with those of persons convicted by a final judgment.

c) Ordinance of the Minister of Justice of 29 March 1991 on the administrative supervision of the courts

Article 3 of the Ordinance, which was later repealed, provided that the President of the Regional Court carried out supervision over administrative aspects of the administration of justice by district courts within the jurisdiction of the Regional Court, whereas Article 4 provided that the President of the

Court of Appeal carried out supervision over administrative aspects of the administration of justice by regional courts within the jurisdiction of the Court of Appeal.

d) Compensation for unjustified conviction, detention on remand or committal to a psychiatric institution

Chapter 50 of the Polish Code of Criminal Procedure of 1969 (old), entitled "Compensation for unjustified conviction, detention on remand or arrest", provided that the State was liable for wrongful convictions or for unjustly depriving an individual of his liberty in the course of criminal proceedings against him, and also for wrongful committal to a psychiatric institution.

Article 487 of the Code of Criminal Procedure, as it stood at the material time, provided, insofar as relevant:

> "1. An accused who, as a result of the reopening of the criminal proceedings against him or of lodging an extraordinary appeal, has been acquitted or resentenced under a more lenient substantive provision, shall be entitled to compensation from the State Treasury for the damage which he has suffered in consequence of having served the whole or a part of the sentence imposed on him. (...)
>
> 4. The provisions of the present chapter shall be applied by analogy to manifestly unjustified arrest or detention on remand."

Article 488 of the Code of Criminal Procedure, as applicable at the material time, in its relevant part provided:

> "1. A request for compensation shall be submitted to a regional court in whose jurisdiction the decision giving rise to the request for compensation was given at first instance. ...
>
> 2. The court shall consist of three judges. Cases relating to requests for compensation shall be given priority and no court fees shall be required from the person concerned."

The Code of Criminal Procedure enacted in 1969, was replaced by a new Code of Criminal Procedure which entered into force on 1 September 1998. The provisions governing compensation for wrongful conviction, unjustified detention on remand and committal to psychiatric institution remained largely unchanged.

COMPLAINTS

1. The applicant alleges, invoking Article 5 of the Convention, that the psychiatrists were all part of the conspiracy against him and that, as a result, the medical opinions issued in his cases did not reflect his actual condition. He complains that he should not have been committed to the psychiatric hospital and that the courts abused psychiatry in a manner known from the communist years, only in order to persecute him.

2. The applicant complains that, while he was detained on remand, his correspondence with the organs of the European Convention of Human Rights was intercepted, opened and read by the court before which criminal proceedings against him were pending.

THE LAW

1. The applicant alleges, invoking Article 5 of the Convention, that his psychiatric detention was unlawful and unjustified.

Article 5, insofar as relevant, reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

The Government submit that all medical experts opinions prepared for the purposes of various criminal proceedings against the applicant indicated in substance that he suffered from a paranoid reaction, was unaware of his pathological condition and was unable to appreciate the consequences of his acts. Therefore they reliably showed that he had been a person of "unsound mind" within the meaning of Article 5 § 1 (e).

Despite the criticism voiced by the applicant as to the quality of the medical opinions concerning his case, there were no reasons to cast doubt on the objectivity and reliability of the medical expert evidence on the basis of which the competent courts found that the applicant could not be held criminally responsible. Furthermore, the Warsaw District and Regional Courts considered, in the light of the expert reports, that the applicant's mental health was such that it was necessary and desirable to treat him in a psychiatric hospital.

The Government draw the Court's attention to the fact that the duration of the applicant's committal was six months. The applicant was discharged from the hospital after the court had received the expert psychiatrists opinion of 31 January 1997, stating that his mental health at that time justified a conclusion that, if released, he would not pose danger to public order.

The applicant submits that he should not have been committed to the hospital. This decision was not justified and was motivated by the hostility of various persons involved in their official capacity in numerous proceedings to which he was a party. It was an abuse of law and an act of a personal vengeance. He was penalised for his persistent efforts to have his rights, and in particular his parental rights, vindicated in the divorce proceedings, held at the beginning of the 1990s. There were no sound medical grounds on which his

committal could reasonably be based and the medical expert opinions were knowingly tailored by their authors so as to make the applicant look as a person of unsound mind. He refers in particular to the decision of the Supreme Court of 14 January 1998.

Under Article 35 § 1 of the Convention the Court may only deal with the matter after all domestic remedies have been exhausted. In its judgment of 25 June 1996 in the case of Amuur v. France the Court reaffirmed that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (*Reports of Judgments and Decisions* 1996-III, p. 846, § 36).

The Court first observes that the applicant was committed to a mental hospital under the judgment of the Warsaw District Court of 19 February 1996 in which this court, having regard to the medical opinion prepared by three psychiatrists following the applicant's hospital observation which had lasted from 1 August to 13 November 1995, found that he could not be held criminally responsible, but posed a threat to public order.

On 25 July 1996 the Warsaw Regional Court upheld the contested decision. Subsequently, the applicant was placed in Pruszków Tworki hospital on 19 August 1996. On 15 November 1996, a psychiatric hospital observation of the applicant, for the purpose of another set of criminal proceedings, began. He was ultimately discharged on 17 February 1997, following a decision of the Warsaw District Court of 6 February 1997, in which the court had regard to a fresh psychiatric report of 31 January 1997 to the effect that the applicant's condition had improved and was at that time such as to warrant a conclusion that he had ceased to pose a threat to public order.

The Court notes that on 14 January 1998 the Supreme Court set aside the judgments concerning the applicant's committal to a mental hospital. The Supreme Court, having analysed *inter alia* the medical evidence which had served as a basis of these decisions, concluded that the applicant's committal was in breach of substantive law in that the lower courts had failed to establish with a sufficient degree of certainty that the applicant's remaining at liberty would pose a threat to legal order. Subsequently, the applicant instituted proceedings in which he claims compensation for unjustified psychiatric detention. These proceedings are pending before the Warsaw Regional Court.

The Court observes that the Supreme Court acknowledged that the applicant's detention had not been justified. In this connection the applicant cannot any more be considered a victim of a breach of the Convention. However, the applicant has not been afforded redress therefor, since the proceedings in which he claims compensation for his detention are currently pending. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complains that, while he was detained on remand, his correspondence with the organs of the European Convention of Human Rights was intercepted by the court before which criminal proceedings against him were pending, opened and read.

Article 8 of the Convention, insofar as applicable, 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."

a) Under Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted.

The Government submit in this respect that the applicant had at his disposal an administrative hierarchical complaint, provided for by Sections 3 and 4 of the Minister of Justice's Ordinance on Rules of Procedure of the Courts of 1991. Under these provisions, it was open to the applicant to complain to the president of the court superior over the court before which the applicant's case was pending, if he believed that his right to respect for correspondence had been in any way breached.

The applicant does not address this issue.

The Court recalls that a hierarchical appeal which does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as an effective remedy for the purposes of Article 35 (see, *mutatis mutandis*, J. Karrer, S. Fuchs and F. Kodrnja v. Austria, application no. 7464/76, Commission decision of 5 December 1978, DR 14, pp. 51, 54; *Horvat v. Croatia*, no. 51585/99).

The Court notes that under the applicable provisions of Polish law, namely the provisions of the Code of Administrative Procedure, a hierarchical appeal constitutes a complaint to a superior authority for the purpose of criticising any shortcomings in the administrative proceedings, either of a procedural nature or related to the merits of the case. These provisions also apply to the administrative aspects of the procedure before the courts. Such a complaint is in fact information submitted to the supervisory organ with the request to make use of its powers if it sees fit to do so. If proceedings are taken upon this request, they take place exclusively between the supervisory organ and the official concerned, and the applicant will not be a party to these proceedings. Under the Code of Administrative Procedure the applicant is only entitled to obtain information about the way in which the supervisory organ has dealt with his hierarchical appeal. As a result, a hierarchical appeal does not give the person employing it a right to the exercise by the State of its supervisory powers, and such an appeal does not constitute an effective remedy within the

meaning of Article 35 of the Convention (see A. Owczarzak v. Poland, application No. 27506/95, Commission's decision of 3 December 1997).

The Court therefore considers that it has not been shown that the applicant had any effective remedy at his disposal which would have enabled him to submit his complaint under Article 8 of the Convention about the interference with his correspondence with the Convention organs to the domestic authorities. Accordingly, this part of the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

b) As to the substance of the complaint, the Government submit that the control over correspondence of detained persons is not in itself incompatible with the Convention. Polish law, namely the provisions of Rules of Detention on Remand, in particular their Section 33, as applicable at that time, provided that correspondence of persons detained on remand was subject to control by either the prosecuting authorities or by a court. Therefore the interference complained of was "in accordance with the law".

They further argue that there are no reasons to doubt that the control of the applicant's correspondence was carried out to ensure that it did not contain material which would be harmful to prison security or the safety of others or otherwise of a criminal nature. As regards the letters from the organs of the European Convention of Human Rights, the control exercised by the court had a purely technical character and pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention.

The applicant submits that his letters should not have been intercepted by the court.

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 should depend on 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.

For these reasons, the Court unanimously

Declares admissible the complaint that the applicant's correspondence with the organs of the European Convention of Human Rights was intercepted, opened and read;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Section Registrar

Christos ROZAKIS
President