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. 34090/96
by W.B.
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 April 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 Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 7 July 1996,

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

Having regard to the Court's partial decision of 30 April 2002,

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 W. B., is a Polish national who was born in 1967 and lives in Dębica, Poland. He was represented before the Court by Mr W. Hermeliński, a lawyer practising in Warszawa. The respondent Government were represented by Mr K. Drzewicki, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

On 10 October 1995 the applicant and other suspects were arrested on suspicion of assault and inflicting torture. On the same day the Tarnów District Court dismissed his complaint about the unlawfulness of his arrest. On 11 October 1995 the applicant was remanded in custody by the Tarnów District Prosecutor, who referred to the strong probability of is guilt, the gravity of the charges against him and the high risk of his hindering the proper conduct of the proceedings by exerting pressure on witnesses. His detention was ordered for a period of three months. On the same day the applicant lodged an appeal against the detention order, questioning the credibility of the evidence of the victims of the alleged assault and claiming that he was innocent. He also referred to the difficult situation of his family.

On 12 October 1995 the applicant requested the Tarnów Regional Prosecutor to order his release. On 20 October 1995 the Tarnów Regional Court dismissed this request. It considered that the victims of the assault had given evidence pointing to the applicant's guilt. It referred to the serious nature of the charges and expressed the view that his case did not disclose any of the grounds provided by Article 218 of the Code of Criminal Procedure for challenging the lawfulness of his detention.

On 24 October 1995 the Tarnów Regional Court dismissed the applicant's appeal of 11 October 1995, referring to its decision of 20 October 1995.

On 24 October 1995 the Tarnów District Prosecutor charged the wives of three suspects with the offence of inducing a victim of the assault to give false testimony.

On 3 November 1995 the applicant requested the prosecutor to release him on bail. This was refused on 6 November 1995 on the ground that the reasons for the applicant's detention had not ceased to exist and that there were no circumstances justifying his release under Article 218 of the Code of Criminal Procedure. The applicant appealed against this decision on 14 November 1995. His appeal was dismissed on 15 November 1995.

On 14 November 1995 the victims of the assault changed their testimony and withdrew charges against the suspects. They had left Poland and their whereabouts were unknown.

On 1 December 1995 the applicant unsuccessfully requested the prosecutor to replace the detention with police supervision and bail.

On 15 December 1995 the Tarnów District Prosecutor ordered that the identity of a certain witness questioned during the investigation be kept secret.

On 3 January 1996 the Tarnów Regional Court prolonged the applicant's detention until 10 February 1996. It noted that the investigation had not yet been completed since one of the co-accused had lodged a complaint concerning an anonymous witness and, in addition, some of the witnesses, whose whereabouts were unknown, had still not been heard. It further noted that, in spite of the fact that the victims of the assault had changed their initial testimony, there were still serious grounds for believing that the applicant had committed the offences in question. The court also observed that the law did not require that the evidence in support of detention had to be such as to justify a conviction.

On 11 January 1996 the prosecutor again refused to release the applicant.

The applicant's appeal against the decision of 3 January 1996 was dismissed on 24 January 1996 by the Kraków Court of Appeal.

On 6 February 1996 the Tarnów District Prosecutor lodged a bill of indictment with the Tarnów Regional Court. It comprised charges in respect of seven persons. The prosecutor requested the summoning of 19 witnesses.

On 26 February 1996 the applicant requested the court to quash the detention or replace it with a more lenient measure. The court dismissed this request reiterating the arguments set out in the decisions of 20 and 24 October 1995 and of 3 January 1996.

The first hearing was held on 1 April 1996. The court decided to examine the charges against one of the defendants in separate proceedings.

At the hearing held on 16 April 1996 the court decided to impose a fine on a witness who had failed to comply with the summons. The court also decided to seek the assistance of the Central Address Office for the establishment of the victims' whereabouts.

On 24 April 1996 the applicant requested the court to quash his detention or to replace it with a less severe measure. His request was dismissed on 26 April 1996 by the Tarnów Regional Court, which noted that the investigative proceedings had not yet been completed and that there were more witnesses to be questioned.

The hearing fixed for 10 May 1996 could not proceed due to the illness of the presiding judge.

On 20 May 1996 a hearing was held. A witness was fined for having failed to appear. The court decided to reveal the identity of the anonymous witness. It also dismissed the applicant's applications for suspension of the

proceedings and for release. It further decided to ask the Tarnów Social Assistance Centre to provide financial support to the applicant's family.

On 31 May 1996 the district prosecutor requested the Polish Interpol Office to establish the victims' whereabouts.

In a letter of 31 May 1996 the Ombudsman informed the applicant that he lacked competence to intervene in pending criminal cases. He further suggested that the applicant file a civil action for damages in connection with the publication of a newspaper article relating to the charges laid against him. Apparently, several articles were published in local newspapers reporting on the investigative proceedings in the applicant's case and alleging that a certain Wiesław B. had been involved in an assault.

The trial continued on 7 June 1996. The court found that the law did not provide for summoning an anonymous witness before the court.

On 11 June 1996 the applicant asked to be released or to have the proceedings discontinued on account of the lack of any factual basis for the charges. Three co-defendants asked the court to order a confrontation with the anonymous witness.

The next hearing was held on 17 June 1996. The court rejected the motions. The applicant appealed. On 1 July 1996 the Tarnów Regional Court refused to consider his appeal concerning the confrontation with the anonymous witness. The court also decided to read out the testimonies of the victims as their whereabouts remained unknown. The hearing was adjourned *sine die*.

On 2 July 1996 the applicant requested to have a new defence counsel appointed for him.

On 10 July 1996 the Kraków Court of Appeal upheld the decision of 17 June 1996 refusing to quash the applicant's detention.

On 19 July 1996 the applicant lodged with the court a request for release on bail. His request was refused on 23 July 1996.

On 8 August 1996 the Kraków Regional Court dismissed the applicant's appeal against the decision of 1 July 1996 concerning the confrontation with the anonymous witness. On the same day the Kraków Court of Appeal dismissed the applicant's appeal against the decision of 23 July 1996 refusing to release him. In the court's view, the final verification of the evidence was not possible at that stage of the proceedings and there was no clear indication that the charges laid against the applicant were unfounded. The court also observed that the conditions for release referred to in Article 218 of the Code of Civil Procedure were not satisfied since effective steps were being taken to support the applicant's family.

On 22 and 26 August and 2 September 1996 the applicant lodged complaints with the Tarnów Regional Court, the Minister of Justice and the Tarnów Regional Prosecutor, complaining about the slow progress in the proceedings. He alleged that the prosecuting authorities had breached his rights guaranteed by the Convention. He also submitted that he and his

family had suffered undue hardship since there were no grounds whatsoever justifying his detention.

On 4 September 1996 the Tarnów Regional Court dismissed the applicant's request for release of 22 August 1996. It observed that the victims of the assault had left the country and could not be heard. The applicant had failed to indicate any new circumstances justifying his request. The court also dismissed the applicant's motion of 2 September 1996 for the trial to be stayed.

On 9 September 1996 the Tarnów Regional Court rejected the applicant's complaint about the allegedly insufficient commitment on the part of his lawyer and dismissed his request to grant him a new legal representative.

On 23 September 1996 the Tarnów Regional Prosecutor informed the applicant that his allegations about the investigating prosecutor's lack of objectivity were unfounded.

On 24 September 1996, in a letter to the Tarnów Regional Court, the applicant, again challenged the impartiality of the investigating prosecutor and complained about the authorities' failure to take any steps in order to establish the whereabouts of the victims.

On 24 September 1996 the Tarnów Regional Court convicted the applicant of assault and sentenced him to six years' imprisonment and a fine. On the same day the court decided to uphold his detention. The prosecutor and the defence counsel lodged an appeal against the judgment. The applicant's lawyer requested his client's release. On 25 September and 30 September 1996 the applicant requested the prosecuting authorities to institute proceedings against the Tarnów District Prosecutor M.S. and a Tarnów Regional Police Officer H.K., who had allegedly invited witnesses to fabricate evidence against him in the proceedings and induced the anonymous witness to incriminate the applicant.

In a letter of 3 October 1996 the Tarnów Regional Prosecutor informed the applicant that his complaints regarding the concealment and fabrication of evidence by the prosecuting authorities were unsubstantiated and that it would ultimately be for the court to assess the reliability of all the evidence. On 14 October 1996 the Tarnów Regional Court dismissed the applicant's request for release of 9 October 1996. The court observed with reference to the first-instance judgment of 24 September 1996 that the applicant had been sentenced to six years' imprisonment.

On 17 December 1996 the Tarnów District Prosecutor informed the applicant that his request to hear as a witness the author of an article about the case, published on 26 October 1995, had been dismissed and that the prosecuting authorities could not bear any responsibility for the contents of newspaper articles.

On 15 January 1997 the Tarnów District Prosecutor rejected the applicant's motion to exclude the Tarnów District Prosecutor's Office from

dealing with his complaint about the false evidence given by the anonymous witness.

On 19 January 1997 the applicant requested his release. He also alleged that faults and oversights on the part of the first-instance court had resulted in a violation of his right to defence and in his unjust conviction. On 24 January 1997 the court dismissed the applicant's request, considering that although the situation of his family was difficult, there were reasons militating against his release, namely the particular brutality of the offence the applicant was charged with. His conviction by the first-instance court indicated the advisability of his further detention.

In response to the applicant's request of 4 December 1996, by a decision of 17 February 1997 the Kraków Court of Appeal appointed a new lawyer under the legal aid scheme.

On 20 March 1997 an appellate hearing took place.

In a letter of 28 March 1997 the court asked the applicant's lawyer to assist him in the appellate proceedings. The court also expressed the hope that the applicant's new lawyer would establish a good working relationship with his client.

On 8 May 1997 the Ombudsman requested the President of the Tarnów Regional Court to inform him about progress in the case.

By a decision of 29 April 1997 the Tarnów District Prosecutor decided to discontinue the investigative proceedings concerning various allegations made by the applicant that the charges against him had been fabricated and that criminal offences had been committed in connection with the investigations and judicial proceedings.

On 27 May 1997 the Kraków Court of Appeal quashed the judgment of 24 September 1996 and referred the case back to the Regional Court, concluding that the reasoning of the first-instance court contained a number of flaws as regards both facts and law. The court also expressed its concern about the fact that all the co-accused had alleged that their rights of defence had been violated.

On the same day Court of Appeal decided to uphold the applicant's detention on remand, having regard to the existence of a strong probability of his guilt, the necessity to secure the conduct of the proceedings and to the fact that there were no circumstances referred to in Section 218 of the Code of Criminal Procedure.

On 12 June 1997 the Tarnów District Prosecutor refused to institute investigative proceedings concerning the unlawful dissemination of information relating to the charges laid against the applicant, arguing that the author of the text had refused to disclose the identity of his source pursuant to the Press Act, and that no legally prescribed restrictions could be imposed on the publication of this kind of newspaper article, given the general nature of the information in question.

On 19 June 1997 the Tarnów Regional Prosecutor's Office informed the applicant that his appeal against the decision of 29 April 1997 of the Tarnów District Prosecutor had been rejected.

On 24 June 1997 the applicant lodged a complaint with the Kraków Court of Appeal, claiming that he had been detained in breach of Article 5 § 3 of the Convention and that his right to be presumed innocent had been violated.

On 29 June and 1 July 1997 the applicant lodged complaints with the prosecuting authorities, complaining about the refusal to institute the investigations, which he had requested.

On 9 July 1997 the Kraków Court of Appeal dismissed the applicant's request for release, considering that, in the circumstances of the case, and given the number of witnesses to be heard, his continuing detention had not exceeded a reasonable time; nor did his family situation militate against his continuing detention. In the court's opinion, the co-accused had contributed to the delay in the proceedings by submitting evidence motions at the late stage of the trial.

On 11 July 1997, in response to the applicant's letters of 1 and 2 July 1997, the President of the Tarnów Regional Court informed the applicant, *inter alia*, that the obligation to determine the exact period for which detention could be prolonged, pursuant to Article 222 of the Code of Criminal Procedure, had ceased to apply after the first-instance court had delivered its judgment, even though that judgment was not final.

On 17 July and 1, 3 and 5 August 1997, the applicant sent letters to various authorities complaining about the shaky evidence on which the accusation was founded, the refusal to release him, the indefinite time-limit and the lack of any legal basis for his continuing detention on remand, which had expired on 10 February 1996. He pointed out in the latter connection that no further decisions had been given in respect of his detention.

On 28 July 1997 the Tarnów Regional Court refused to release the applicant, considering that his continuing detention was justified in view of the serious charges confirmed by the evidence and in order to secure the proper conduct of the proceedings. The court was of the opinion that although the applicant's family situation was difficult, it did not argue for his release.

On 7 August 1997 the president of the Tarnów Prison informed the applicant that there were no legal grounds for his release. In two letters sent on 8 August 1997 from the Tarnów Regional Court the applicant was informed that the periods of his detention on remand were limited until a judgment at first-instance had been given. On 19 August 1997 the President of the Tarnów Regional Court reiterated this position.

On 21, 22 and 26 August and 3 September 1997 the applicant again lodged several complaints with various authorities, claiming that his

detention on remand lacked any legal basis. He also requested the Tarnów Regional Court to allow him to be present at the court session at which the lawfulness of his detention on remand was to be examined.

On 12 September 1997 the Tarnów Regional Court dismissed the applicant's request for release, considering that the law did not require that the evidence in support of detention had to be such as to justify conviction. The court observed that even if the Court of Appeal had quashed the first-instance judgment, it had not decided to release the applicant. The court referred to the risk of severe punishment for the accused and to the need to secure the proper conduct of the proceedings. The applicant's family situation was difficult but not critical. The court also considered that the law did not provide for the presence of a detainee in proceedings concerning the prolongation of detention on remand.

In a letter of 25 September 1997 the President of the Kraków Court of Appeal explained to the applicant that the entry into force of the new provisions concerning detention on remand on 4 August 1996 had not resulted in the unlawfulness of a detention order imposed by a prosecutor prior to that date. In addition, the grounds for the applicant's detention on remand had been repeatedly examined by the courts during numerous proceedings held on 20.10.1995, 3.01.1996, 24.01.1996, 28.02.1996, 26.04.1996, 17.06.1996, 23.07.1996, 4.09.1996, 24.09.1996, 14.10.1996, 24.01.1997, 27.05.1997, 9.07.1997, 28.07.1997 and 12.09.1997.

On 29 September and 2 October 1997 hearings were held. On 2 October 1997 the Tarnów Regional Court refused to release the applicant, considering that, in view of the sufficient likelihood of his guilt and the seriousness of the charges, his detention was warranted. The court also noted that the time-limits for detention on remand set out in Article 222 § 4 of the Code of Criminal Procedure did not apply to the applicant's case. As regards the applicant's situation, difficult as it might be, it was not so critical as to justify his release. The court ordered a search for the witnesses of the assault.

On 3 October 1997 the President of the Kraków Court of Appeal rejected the applicant's complaint about the excessive length of the proceedings against him. On 6 October 1997 the President of the Tarnów Regional Court reiterated his view about the time-limits for detention on remand, which had been already expressed in several letters addressed to the applicant.

On 14 and 15 October 1997 hearings were held. On 15 October the court dismissed the applicant's request for release, observing that the investigation had not yet been completed and repeating the grounds stated in previous decisions. The court reiterated the view that the obligation to determine the duration of the detention on remand existed only until a first-instance judgment had been given.

On 22 October 1997 the applicant lodged a complaint with the Regional Court, claiming that his detention on remand lacked any legal basis as the

time-limits set by Section 222 §§ 3 and 4 had been exceeded. On the same day the applicant's lawyer lodged unsuccessful requests for his client's release and for the proceedings to be stayed. On the same day the Tarnów Regional Court refused to release the applicant, referring to the reasoning of its previous decisions. The court also pointed out that it was possible to read out the testimonies of the witnesses who could not be heard by the court.

On 29 October and 3 November 1997 the applicant lodged requests for release, referring to Section 213 § 1 and Section 214 of the Code of Criminal Procedure.

In a letter of 4 November 1997 the President of the Tarnów Regional Court informed the applicant that on 27 May 1997 the Kraków Court of Appeal had quashed the first-instance judgment of 24 September 1996 and upheld the applicant's detention without fixing the date up until which the detention was to last. On 10 October 1997 the applicant had been in detention for two years. The case had been referred to the Tarnów Regional Court for re-examination. The Regional Court had not found it necessary to determine the point until which the detention should last or to file a request with the Supreme Court to prolong the applicant's detention on remand, considering that there were no time-limits for the detention on remand after the delivery of the first-instance judgment. The court admitted that there was a legal problem as regards the interpretation of Section 222 § 3 of the Code of Criminal Procedure, which should be resolved by the Supreme Court in order to establish common practice. The court maintained its position on this matter, declaring that the period of detention on remand was limited only until the delivery of the first-instance judgment even though it was quashed by the second-instance court.

On 6 November 1997 the applicant asked the court to stay the proceedings. At the hearing held on 19 November 1997 the court refused to do so or to release him, referring to the grounds invoked in previous decisions.

The next hearing was held on 20 November 1997. Upon the request of the co-accused, the court admitted the evidence of four new witnesses.

The subsequent hearing was held on 8 December 1997. The court decided to read out the testimonies of the victims of the assault and to close the trial.

By a judgment of 10 December 1997 of the Tarnów Regional Court the applicant was found guilty of the charges against him and sentenced to six year's imprisonment. Additionally, the court deprived him of his civic rights for three years. The court decided that the applicant's further detention was unnecessary in view of the fact that the proceedings had been completed, that his family was in a difficult situation and that he had spent over two years in the detention centre.

The prosecutor and the lawyers lodged appeals against the first-instance judgment.

By a judgment of 17 June 1998 of the Kraków Court of Appeal, the applicant was acquitted of all the charges against him as there was no sufficient evidence of his guilt. The prosecutor filed a cassation appeal against this judgment.

At the hearing of 24 April 2002, the Supreme Court decided not to examine the cassation appeal owing to the fact that the public prosecutor had withdrawn it.

B. Relevant domestic law

1. The Code of Criminal Procedure of 1969

At the material time, Article 209 of the 1969 Code of Criminal Procedure which set out general grounds justifying the imposition of preventive measures, provided as follows:

> "Preventive measures may be imposed in order to secure the proper course of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence."

Furthermore, the Code allowed authorities a margin of discretion as to whether to continue the enforcement of preventive measures. Detention on remand was regarded as the most severe preventive measure. Article 213 of the Code read:

> "A preventive measure shall be immediately quashed or changed if the grounds therefor have ceased to exist or if new circumstances have arisen, which justify quashing a given measure or replacing it with one that is either more or less severe."

Article 225 of the Code provided:

> "Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of these measures are considered adequate."

Article 217 of the Code, before it was amended on 1 January 1996, provided insofar as relevant:

> "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 he has no permanent domicile, or
>
> 2. there is a reasonable risk that he will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means, or
>
> 3. the accused was charged with a commission of a criminal offence or acted as a habitual offender, as provided for by the Criminal Code, or

4. the accused was charged with the commission of an act which constituted significant danger to society."

Pursuant to Article 218 of that Code, if there were no special considerations to the contrary, detention on remand should not be imposed or should be lifted, if it involved danger to life or limb or entailed particular hardship for a suspect or his family.

Until 4 August 1996, when the Code of Criminal Procedure was amended, Polish law did not set out any statutory time-limits concerning detention on remand in court proceedings, but only in respect of the investigative stage. Article 222 of the Code of Criminal Procedure, as applicable after 4 August 1996, provided, insofar as relevant:

"3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning ordinary offences. In cases concerning serious offences this period may not exceed two years.

4. In cases where it is particularly justified the Supreme Court may, upon the request of the court competent to deal with the case (...) 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 suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings in the terms referred to in paragraph 3."

Subsequently, point 4 was extended to include also "other significant circumstances, which could not be overcome by the organs conducting the proceedings".

2. The 1997 Code of Criminal Procedure of 1997

On 1 September 1998 the 1997 Code of Criminal Procedure replaced the 1969 Code. Article 263 of the 1997 Code, in a version applicable until 1 July 2003, provided insofar as relevant:

"§ 1. During investigation the court which decides about detention on remand shall impose it for a period not longer than 3 months.

§ 2. If the special circumstances of a case make it impossible to conclude the investigation within the time-limit provided in § 1, detention on remand may be prolonged, at the request of the prosecutor and when it is necessary, by:

the trial court – for up to 6 months,

the appeal court – for a further fixed period necessary to conclude the investigation but not longer than 12 months.

§ 3. The length of detention on remand until the delivery of a first judgment by the trial court shall not exceed 2 years.

> § 4. Detention on remand may be prolonged for a fixed period exceeding the periods provided in §§ 2 and 3 only by the Supreme Court at the request of the court dealing with a case (...) – if it is necessary because of the suspension of criminal proceedings, the prolonged psychiatric observation of an accused, the prolonged preparation of an expert opinion, the collection of evidence in a particularly complicated case or abroad, a delay in the proceedings caused by an accused as well as other obstacles which could not be overcome. ...
>
> § 7. Whenever it is necessary to impose detention on remand after the first judgment of the first-instance court has been rendered, the detention imposed may be prolonged for a maximum period of three months."

Article 251 § 2 states that an obligation to determine the period of detention on remand exists until the final judgment has become valid.

3) Act of 17 June 2004

On 17 June 2004 Polish Parliament adopted a new law 'on a complaint about a breach of a right to have one's case heard within a reasonable time'. The Act entered into force on 17 September 2004.

Article 2 of the Act provides for a special action by which a party can seek a declaration that his or her right to have the case heard within a reasonable time has been breached. The court shall take into consideration the following criteria: the conduct of the court before which the case is pending; the character of the case and the complexity of the legal and factual issues involved therein; what was at stake for the complainant, and the conduct of the parties. The length complaint must be lodged when the proceedings concerned are still pending.

Pursuant to Article 12, if the court finds that the length complaint is well-founded, it shall give a ruling to this effect. If the complainant so requests, the court can also recommend that the court before which the case is pending takes certain procedural measures in the impugned proceedings. The court may also award an appropriate amount of money to the complainant, in an amount not exceeding PLN 10,000.

Under Article 18, within six months after the entry into force of this Act, that is, from 17 September 2004, anyone who lodged an application with the European Court of Human Rights in due time complaining of a violation of the 'reasonable-time' requirement contained in Article 6 § 1 of the Convention was entitled to lodge a length complaint provided for by the Act, if the application to the Court was lodged when the proceedings were still pending and if the application had not by then been declared admissible by the European Court.

COMPLAINTS

1. The applicant complained that his detention in the period between 27 May 1997 and 9 July 1997 lacked a legal basis, in breach of Article 5 § 1.

2. The applicant further complained under Article 5 § 3 about the unreasonable length of his pre-trial detention.

3. The applicant complained under Article 5 § 3 of the Convention that he had been remanded in custody by a prosecutor who was not "a judge or other officer authorised by law to exercise judicial power".

4. The applicant complained under Article 6 § 1 about the unreasonable length of the criminal proceedings against him.

5. The applicant complained under Article 6 § 2 that some newspapers had published articles about the charges preferred against him before the bill of indictment was lodged with the court.

THE LAW

1. The applicant complained under Article 5 § 1 of the Convention that his detention in the period between 27 May 1997 and 9 July 1997 lacked a legal basis. Article 5 § 1, in so far as relevant, provides:

> "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: ...
>
> (a) the lawful detention of a person after conviction by a competent court;

1. The parties' submissions

The Government stressed that the period of the applicant's detention at issue had been entirely lawful. Although on 27 May 1997 the Kraków Court of Appeal had quashed the first-instance judgment of 24 September 1996 and referred the case back to the Regional Court, it had also decided to uphold the applicant's detention on remand. On 9 July 1997 the Court of Appeal dismissed the applicant's request for release.

The applicant admitted that on 27 May 1997 the Kraków Court of Appeal had upheld the applicant's detention. However, he maintained that the decision of the court had not been lawful. In his opinion the domestic authorities had wrongly interpreted Article 222 § 3 of the "Old" Code of Criminal Procedure, as a result of which his detention had then become "detention of unlimited duration." The applicant referred to the letter of 4 November 1997 of the President of the Tarnów Regional Court, who had admitted that there had been a legal problem regarding the interpretation of

Section 222 § 3 of the Code of Criminal Procedure. The applicant also observed that according to new case law of the Polish Supreme Court (I KPZ 2/98 of 23 April 1998) the fact that a first-instance judgment had been rendered did not relieve a court of its duty laid down in Article 211 § 2 to determine the time-limit of the detention. He further noted that following the amendments of the relevant provisions of the 1997 Code of Criminal Procedure in 2000, whenever the need arose to impose detention on remand after the first judgment of the first-instance court had been rendered, the detention imposed might be prolonged for a maximum period of three months (Article 263 § 7 of the CCP in the version applicable until 1 July 2003) and the obligation to set out the time-limit for detention existed until the final judgment had become valid (Article 251 § 2 of the CCP).

2. The Court's assessment

The Court recalls that, on the question of whether the contested arrest and detention are "lawful", the Convention essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely, to protect individuals from arbitrariness. Nevertheless, a period of detention will, in principle, be lawful if detention is carried out pursuant to a court order (see *Benham v. the United Kingdom*, judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III no. 10 pp. 752-753, paras. 40-42). The Court has also stressed that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (*Baranowski v. Poland*, no. 28358/95, §§ 56-57, ECHR 2000-III).

As regards the present case, the Court observes that although on 27 May 1997 the appellate court quashed the first-instance judgment of 24 September 1996, it did not acquit the applicant nor did it decide to release him. The applicant's detention on remand was subsequently reviewed on several occasions. The courts refused to issue a new detention order with a fixed period for the applicant's detention, considering that according to Section 222 § 3 of the Code of Criminal Procedure, such an obligation existed only until the first-instance judgment had been delivered even if it was quashed by the second-instance court.

There is no indication that the basis of the applicant's detention from 10 February 1996 until 9 July 1997 and afterwards was incompatible with domestic law or with the principle of legal certainty. The Court notes that the domestic courts' decisions were based on the common interpretation of the Section 222 § 3 of the Code of Criminal Procedure at the time. The Court does not find that the Polish courts failed to apply the relevant

provision of the domestic law correctly or interpreted it in an arbitrary manner. Moreover, it is not for the Court to impose a different interpretation of the provision in question. Accordingly, the Court finds the applicant was detained in compliance with requirements of Article 5 § 1 of the Convention (see *Węgrzyn v. Poland* (dec.), no. 39251/98, 5 December 2002; *Chodecki v. Poland* (dec.), no.49929/99, 9 October 2003)

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

2. The applicant complained under Article 5 § 3 that his detention on remand in the period between 27 May 1997 and 10 December 1997, the date on which the Tarnów Regional Court gave a first judgment in the case, had lasted unreasonably long. Article 5 § 3, in so far as relevant, provides:

> "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."

1. The parties' submissions

The Government were of the opinion that there had been valid reasons for holding the applicant in custody for the entire period in question. They pointed out that there had existed a serious suspicion against the applicant and that his detention had been necessary to ensure the proper conduct of the proceedings. The Government argued that these reasons remained valid even after the quashing of the first-instance judgment of the Regional Court and that there were no circumstances that could militate in favour of the applicant's release.

The Government further submitted that the applicant's detention had been subject to permanent and diligent judicial supervision. In the Government's view, the domestic courts adduced "relevant and sufficient" reasons for the applicant's detention The Government concluded that the length of the applicant's detention had not been excessive.

The applicant maintained that that court had not given sufficient and relevant reasons for his detention. The detention decisions were laconic, vague and sketchy. The courts had repeatedly relied on the argument that the grounds for his continuing detention had not ceased to exist. They also relied on the need to ensure the due course of the proceedings without, however, providing any explanation as to the nature of the alleged threat.

In the applicant's opinion the suspicion that he had committed the offences in question could suffice as a basis for his detention only at the early stage of the proceedings, whereas later, the authorities should have considered other guarantees that he would appear for trial, such as bail or police supervision.

2. The Court's assessment

The Court notes that the applicant was arrested on 10 October 1995 and was deprived of his liberty according to Article 5 § 1 (c) of the Convention until 24 September 1996, on which date, he was convicted by a judgment of the Tarnów Regional Court. After the date of the judgment, the applicant's deprivation of liberty was based on Article 5 § 1 (a) of the Convention as "the lawful detention of a person after conviction by a competent court" and cannot therefore be taken into account for the purposes of Article 5 § 3 of the Convention (see, for instance, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, p. 14, § 36). On 27 May 1997 the Kraków Court of Appeal quashed the first-instance judgment and referred the case back to the first instance. At the same time, the court decided not to release the applicant. Accordingly, he was again detained on remand until his release on 10 December 1997. The overall period of the applicant's detention on remand lasted therefore one year, five months and 28 days.

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 the second part of 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.

3. The applicant complained under Article 5 § 3 of the Convention that he had been remanded in custody by a prosecutor who was not "a judge or other officer authorised by law to exercise judicial power". Article 5 § 3 of the Convention which, insofar as relevant, reads:

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

1. The parties' submissions

The Government refrained from expressing their opinion on the merits of this complaint. The applicant referring, *inter alia*, to the Court's judgment in the case of *Niedbała v. Poland* of 4 July 2000 reiterated his complaint.

2. The Court's assessment

The Court first notes that it may only deal with the matter if a relevant complaint has been submitted to it "within a period of six months from the date on which the final decision was taken". It observes in this respect that the applicant was remanded in custody under the prosecutor's decision of 11 October 1995, while the first hearing in the case was held on 1 April

1996. The Court has repeatedly held that , for the purposes of Article 35 § 1 of the Convention, the point at which the running of the six-month period started is the date on which a detained person was for the first time brought before the judge, which in the applicant's case was on the latter date. This part of the application therefore complies with this requirement of Article 35 § 1 of the Convention.

As to the substance the Court, having regard to the criteria established in its case-law in respect of a "judge" or "officer authorised by law to exercise judicial power" for the purposes of Article 5 § 3 and, more particularly, to its judgments in the cases of *Niedbała v. Poland*, cited above and *Dacewicz v. Poland* (no. 34611/97, §§ 21-23, 2 July 2002) considers that an examination of the merits of the complaint is required.

4. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been excessively long. The Government disagreed.

Article 6 § 1 of the Convention, in so far as relevant, provides:

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

The Court must first determine whether the applicant has exhausted the remedies available to him in Polish law, in accordance with Article 35 § 1 of the Convention.

It observes that 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 ("the 2004 Act") entered into force. In the present case the question arises whether the applicant should be required to exhaust this remedy, given that he had introduced his application prior to 17 September 2004, the date of entry into force of the 2004 Act.

The Court reiterates in this connection that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, this rule is subject to exceptions which may be justified by the particular circumstances of each case; this is also the case when the application concerns length of judicial proceedings (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001; *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

The Court observes that the 2004 Act contains, in its Section 18, the provisions of a transitional character concerning persons who, as the applicant in the present case, lodged an application with the Court alleging a violation of Article 6 of the Convention on account of the unreasonable length of the proceedings. Under this provision it is open for them to lodge, within six months from 17 September 2004, a complaint provided for by Section 5 of that Act with a competent domestic court, provided that their

application with the Strasbourg Court had been lodged in the course of the proceedings concerned and that the Court had not yet adopted a decision on the admissibility of their case. Accordingly, the Court finds that the applicant was entitled, throughout the period from 17 September 2004 until 17 March 2005, to lodge such a complaint.

The Court recalls that it has held that this remedy provided by Polish law was effective in respect of excessive length of criminal proceedings as 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 (*Charzyński v. Poland* (dec.), no. 15212/03).

The Court further notes that the applicant was informed, by a letter of the Registry of 1 December 2004, of the existence of remedies provided for by the 2004 Act. However, by a letter of 18 January 2005 he informed the Court that it did not intend to avail himself of them.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

5. The applicant complained that his right to be presumed innocent was violated as certain newspapers had published articles about the charges preferred against him before the bill of indictment was lodged with the court. He relies on Article 6 § 2 of the Convention which provides:

> " Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court notes that, by a judgment of 17 June 1998 of the Kraków Court of Appeal, the applicant was acquitted of all the charges against him. In these circumstances, the Court considers, he can no longer claim to be a victim within the meaning of Article 34 of the Convention.

It follows that this complaint is incompatible *ratione personae* and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares admissible, without prejudging the merits, the applicant's complaints concerning the breach of his right to be brought before a judge or other officer authorised by law to exercise judicial power and the length of his detention on remand.

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President