CASE OF KUDŁA v. POLAND

(Application no. 30210/96)

JUDGMENT

STRASBOURG

26 October 2000

In the case of Kudła v. Poland,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr J.-P. COSTA,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mrs S. BOTOUCHAROVA,
Mr M. UGREKHELIDZE,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 7 June and 18 October 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the European Commission of Human Rights ("the Commission") on 30 October 1999 and by a Polish national, Mr Andrzej Kudła ("the applicant"), on 2 December 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 30210/96) against the Republic of Poland lodged with the Commission under former Article 25 of the Convention by the applicant on 12 April 1995.

3. The applicant alleged, in particular, that he had not received adequate psychiatric treatment during his detention on remand, that his detention had been unreasonably lengthy, that his right to a "hearing within a reasonable time" had not been respected and that he had had no effective domestic remedy whereby to complain about the excessive length of the criminal proceedings against him.

4. The Commission declared the application partly admissible on 20 April 1998. In its report of 26 October 1999 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry.], it expressed the opinion that there had been a violation of Article 3 of the Convention (by fourteen votes to thirteen); that there had been a violation of Article 5 § 3 (unanimously); that there had been a violation of Article 6 § 1 (unanimously); and that it was not necessary to examine whether there had been a violation of Article 13 (by eighteen votes to nine).

5. Before the Court the applicant, who had been granted legal aid, was represented by Mr K. Tor and Mr P. Sołhaj, lawyers practising in Cracow (Poland). The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

6. On 6 December 1999 a panel of the Grand Chamber decided that the case should be considered by the

Grand Chamber (Rule 100 § 1 of the Rules of Court). The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. The President of the Court directed that in the interests of the proper administration of justice (Rules 24, 43 § 2 and 71), the case should be assigned to the same Grand Chamber as the case of Mikulski v. Poland (application no. 27914/95).

7. The applicant and the Government each filed a memorial.

8. Subsequently the President of the Grand Chamber invited the Government to produce the applicant's medical records kept by Cracow Remand Centre during his detention on remand after 4 October 1993. The Government supplied the relevant documents on 12 May 2000. Copies were sent to the applicant on 25 May 2000.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 June 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mr K. DRZEWICKI, *Agent*,
Mrs M. WĄSEK-WIADEREK,
Mr K. KALIŃSKI, *Counsel*,
Mr W. DZIUBAN, *Adviser*;

(b) *for the applicant*
Mr K. TOR,
Mr P. SOŁHAJ, *Counsel*.

The Court heard addresses by Mr Sołhaj, Mr Drzewicki, Mr Kaliński Mrs Wąsek-Wiaderek and Mr Tor.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. THE APPLICANT'S DETENTION AND THE PROCEEDINGS AGAINST HIM

10. On 8 August 1991 the applicant was brought before the Cracow Regional Prosecutor (*Prokurator Wojewódzki*), charged with fraud and forgery and detained on remand. Since the applicant reported to the prosecutor that he was suffering from various ailments – in particular, depression – the authorities ordered that he be examined by a doctor. After the examination, which was carried out a few days later, the applicant was found fit to be detained in prison. He was placed in Cracow Remand Centre (*Areszt Śledczy*).

11. Later, on an unspecified date, the applicant appealed against the detention order. On 21 August 1991 the Cracow Regional Court (*Sąd Wojewódzki*) dismissed his appeal, finding that there were strong indications that he had committed the offences with which he had been charged. Referring to the results of his medical examination, the court found no circumstances which would justify his release on health grounds.

12. From August 1991 to the end of July 1992 the applicant filed some thirty applications for release and appeals against decisions refusing to release him.

13. In the meantime, in October 1991, the applicant had attempted to commit suicide in prison. From 4 November 1991 he went on hunger strike for an unspecified period.

14. In November 1991 the authorities ordered that the applicant be examined by doctors. The relevant report was made by experts of the Faculty of Forensic Psychiatry of the Jagiellonian University on 25 November 1991. The doctors considered that the applicant was not fit to be detained in an ordinary prison and recommended that, if his detention was to be continued, he should be confined in the psychiatric ward of a prison hospital. The applicant was subsequently taken to Bytom Prison Hospital, where he was placed in a

ward for internal diseases and given treatment for his mental condition. The applicant stayed in the hospital for an unknown period. He was then transferred back to Cracow Remand Centre.

15. On 20 January and 27 February 1992 the applicant was examined by specialists in forensic medicine. They considered that he needed psychiatric treatment in prison but that it was not necessary to place him in the psychiatric ward of a prison hospital.

16. On 30 April 1992 a bill of indictment against the applicant was lodged with the Cracow Regional Court. In all, twenty-nine charges were brought against him and his nine co-defendants. The case file comprised nineteen volumes. The prosecution requested the court to hear evidence from ninety-eight witnesses.

17. On 15 June 1992, at the court's request, doctors from the Cracow Clinic of Psychiatry and the Faculty of Medicine of the Jagiellonian University reported on the applicant's psychological state. Their report stated, *inter alia*:

> "The patient shows persistent suicidal tendencies. Following the medical examination, we find that he is suffering from a deep syndrome of depression accompanied by thoughts of suicide. In the light of the intensity of the suicidal thoughts and of the fact that he has already attempted to commit suicide, he should receive psychiatric treatment. His detention seriously endangers his life (a grave risk of a further suicide attempt) ..."

18. On 27 July 1992 the Cracow Regional Court quashed the detention order.

19. On 26, 27 and 28 October and on 14 and 15 December 1992 the court held hearings in the applicant's case. A hearing listed for 8 February 1993 was cancelled because the applicant failed to appear. His lawyer submitted a certificate to the effect that the applicant was on five days' sick-leave; however, the court ordered that the applicant should, within three days, submit a medical certificate issued by a forensic expert, "failing which preventive measures [*środki zapobiegawcze*] to ensure his presence at the trial [will] be imposed on him". The applicant did not submit the required certificate but, on 12 February 1993, informed the court that he was undergoing climatic treatment in Świnoujście and was to stay there until 7 March 1993. On 18 February 1993, since the applicant had not informed the court of the address at which summonses could be served on him, the court ordered that a "wanted" notice be issued with a view to locating and redetaining him on the ground that he had failed to attend hearings. The next hearing scheduled for 16 March 1993 was cancelled due to the applicant's absence.

20. The detention order of 18 February 1993 had not been enforced by 4 October 1993, when the applicant was arrested by the police in connection with a traffic offence. He was placed in Cracow Remand Centre.

21. The Regional Court listed hearings for 6 October and 15 and 17 November 1993 but cancelled all of them because the applicant's mental state (in particular, his difficulties in concentrating) did not allow him to participate properly in the trial. In a prison doctor's note made on 17 November 1993 his state was described as follows:

> "Is able to take part in today's proceedings (with limited active participation on account of [illegible words] difficulty in concentrating)."

According to a further expert report (obtained by the court at the end of 1993) the applicant was "not suffering from mental illness" at that time and his mental state was "not an obstacle to keeping him in detention".

22. Meanwhile, on 18 October 1993, the applicant's lawyer had unsuccessfully appealed against the detention order, arguing that the applicant, after his release on 27 July 1992, had received continuous treatment for his severe depression and that his failure to appear before the trial court had been due to his psychological state.

23. Between October 1993 and November 1994 the applicant made twenty-one further unsuccessful applications for release and appealed, likewise unsuccessfully, against each refusal.

24. On 13, 14 and 16 December 1993 the court held hearings. Hearings scheduled for the end of January 1994 were cancelled as, on 26 January 1994, the applicant had attempted to commit suicide by taking an overdose (see paragraphs 63-64 below).

25. The trial continued on 14, 15 and 16 February 1994. The hearings listed for 9 and 10 March 1994

were cancelled because the presiding judge was ill. Subsequent hearings took place on 14, 15 and 16 June 1994. In the meantime the applicant had undergone psychiatric observation in Wrocław Prison Hospital (see paragraph 58 below).

26. The next hearing took place on 11 July 1994. The hearings listed for 12 and 14 July 1994 were cancelled because the applicant had withdrawn the power of attorney granted to his defence counsel. The trial continued on 20, 21 and 22 September, 25 and 26 October, and 14 and 15 November 1994. The hearings listed for 20, 21 and 22 December 1994 were cancelled because one of the applicant's co-defendants was admitted to hospital at that time.

27. In the meantime, on 17 November 1994, the applicant had complained to the President of the Cracow Regional Court about the length of his detention and the conduct of the proceedings in his case. He complained, in particular, that all of his nine co-defendants had been released, whereas he was still being detained despite the fact that the overall length of his detention had now exceeded two years. He asserted that the minutes of the hearings had not reflected witnesses' testimony, that the court had failed to enter in the record his and his lawyer's submissions and had not allowed him to express his version of the facts of the case freely. The criminal proceedings against him, which had to date lasted more than four years, were, to use his term, a "nightmare".

28. On 7 December 1994 the applicant complained to the court about his psychiatric treatment in prison. The presiding judge asked the prison authorities for explanations. They informed him of the number of medical examinations undergone by the applicant, gave details of them and produced copies of the relevant medical records.

29. At about the same time, the applicant again requested the court to release him on health grounds. He also referred to his family situation, maintaining that his lengthy detention was putting a severe strain on his family. On 8 December 1994 the Cracow Regional Court dismissed the application.

30. On 4 January 1995, on an appeal by the applicant, the Cracow Court of Appeal (*Sąd Apelacyjny*) upheld the Regional Court's decision and held that his detention should continue in view of the reasonable suspicion that he had committed the offences in question and the fact that he had been detained on the ground of the risk that he would abscond. The court also found that the situation of the applicant's family, although difficult, was not a circumstance that could militate in favour of his release.

31. On 25 January 1995 the applicant's lawyer applied to the Cracow Regional Court to have the detention order quashed and the applicant released under police supervision. He stressed that on 23 January 1995 the applicant had again tried to commit suicide in prison, by attempting to hang himself (see paragraphs 69-70 below). This event, taken together with his chronic depression, had been a clear warning that continuing detention could jeopardise his life. He further pointed out that the applicant had been redetained only because of his absence from hearings. That ground could not warrant his detention any longer because evidence against him had already been heard and keeping the applicant in detention did not serve the purpose of ensuring the proper conduct of the trial.

32. On 13 February 1995 the Cracow Regional Court dismissed that application. It held that, according to a report from the prison authorities, the applicant's suicide attempt had been of an attention-seeking nature and that the original grounds for his detention were still valid. The relevant report, dated 10 February 1995, reads:

> "Further to the [Regional] Court's request regarding the accused, we confirm that Andrzej Kudła, who remains at your disposal, ... at 4.45 a.m. on 23 January this year, attempted suicide in order to attract attention to his case.
>
> On the basis of information from, and the conclusions of, the duty doctor, psychiatrist and psychologist, it was established that the prisoner suffered from personality disorders manifesting themselves as reactive depression. The result of the prisoner's action was a slight abrasion of the skin on his neck in the form of a stripe made by the rope after hanging; no neurological changes were observed.
>
> The prisoner carried out this demonstration as he considers that the criminal proceedings are taking a very long time and because he is distancing himself from the charges laid against him.
>
> Despite his emotional problems, he is in control of the situation and is putting pressure on the [prison authorities].
>
> By decision of the Governor, he did not receive disciplinary punishment for his behaviour. Psycho-corrective discussions [were held with him], aimed at explaining the real threats to the prisoner's health and life arising from his behaviour.

In a subsequent psychiatric consultation (carried out after the suicide attempt) a regression of the symptoms of reactive depression was noted.

He continues to be held in a cell with others because of the possibility of his self-destructive behaviour arising from a subjective feeling of suffering. He is classed as a difficult prisoner and therefore remains under constant observation and under the control of the prison security and medical staff.

[Stamp and signature illegible]"

33. On 25 February 1995 the applicant's lawyer appealed against the Regional Court's decision, submitting that the applicant's mental health had significantly deteriorated and that he was constantly suffering from depression. He requested the court to appoint psychiatric and other medical experts to assess the applicant's state of health, instead of relying on the assessment made by the prison authorities. He also maintained that the length of the proceedings was inordinate and stressed that the applicant had already spent two years and four months in detention.

34. On 2 March 1995 the Cracow Court of Appeal dismissed the appeal. The court considered that it was not necessary to call medical experts and that the applicant's detention should continue in order to ensure the proper conduct of the proceedings. Later, between 8 March and 1 June 1995, the applicant made four further unsuccessful applications for release and lodged similarly ineffective appeals against decisions to keep him in detention.

35. On 13, 14 and 15 March, 3, 4 and 5 April, and 4, 5, 30 and 31 May 1995 the Regional Court held hearings and heard evidence from witnesses. Certain witnesses, who had previously failed to appear, were brought to the court by the police.

36. On 1 June 1995 the Cracow Regional Court convicted the applicant of fraud and forgery and sentenced him to six years' imprisonment and a fine of 5,000 zlotys (PLN). On 2 June 1995 both the applicant and his lawyer filed a notice of appeal.

37. On 1 August 1995 the applicant complained to the Minister of Justice that the trial court had not prepared the statement of reasons for its judgment within the statutory time-limit of seven days. He submitted that the delay had already amounted to two months.

38. At some later date the applicant requested to be released, arguing that his prolonged detention had had very harmful effects on his health and on the well-being of his family. On 14 August 1995 the Cracow Regional Court dismissed his application. On 31 August 1995, on an appeal by the applicant, the Cracow Court of Appeal upheld that decision and observed that his detention was warranted by the severity of the sentence imposed.

39. On another unspecified date the applicant complained to the Minister of Justice about the length of the proceedings in his case, pointing out that the Cracow Regional Court had failed to provide him with the statement of reasons for its judgment within the statutory time-limit. That had significantly prolonged the appellate proceedings. On 28 August 1995 the Head of the Criminal Department of the Ministry of Justice, in reply to that complaint, informed him that it was likely that the statement of reasons for the judgment would exceed two hundred pages and that the failure to comply with the statutory time-limit was due to the fact that the judge rapporteur had been on leave.

40. On 27 September 1995, at the Regional Court's request, the applicant was examined by forensic psychiatrists from the Collegium Medicum – Faculty of Forensic Medicine of the Jagiellonian University in Cracow. The relevant part of their report reads:

"... As can be seen in the file, and in accordance with the findings of the medical experts, the defendant underwent observation in the psychiatric ward of Wrocław Prison Hospital. In the course of the hospital observation, attempts at suicide and lengthy, vague losses of consciousness were observed. The comprehensive conclusions ... of the report by the psychiatric experts in Wrocław showed that the defendant exhibited personality disorders and a predisposition to situational reactions, which do not militate decisively against him being in prison, provided there is guaranteed outpatient psychiatric care.

[The applicant] explained that he was still in the remand centre and felt very ill, he had a permanent headache located in the apex, radiating to the nape. He very often became breathless and had difficulty breathing, particularly at night. On those occasions he asked the officers for help and they took him to the medical ward. On most occasions the doctor prescribed Relanium [diazepam], which did not relieve his suffering. He claimed that he continued to take Relanium at doses of at least 30 mg at night and 15 mg during the day. This medicine 'organised him', as he said, and he could not function without it. He felt constantly tired, did not sleep at night and was annoyed by his continued stay in prison. He considered this preposterous, as he

had already 'overserved' any sentence he could be given. During a conversation with the defendant, it was observed that he had an abrasion of the epidermis at the base of the neck. When his shirt collar was opened, it was found to be a linear abrasion of the epidermis around the front section of the neck, corresponding to the furrows found on a hanging victim. The defendant explained that ... he had tried to hang himself with a sheet, but had been resuscitated. This was his second attempt at suicide and he could not explain why he behaved in this way. He maintained that he had moments when he felt as if his consciousness was interrupted and that at these times he tried to take his own life, mainly by hanging but also by taking drugs and slashing himself with a razor. He claimed that there was also an occasion when he left home after a family dispute and woke up several weeks later in a boarding house in Świnoujście. He did not understand how he came to be there or what had happened to him during those weeks.

The person under examination is currently making good verbal contact, is oriented, his mood is somewhat subdued, he is tense, irritable and experiences a strong sense of injustice. He states that he is being treated inappropriately. He receives some medicines which do not improve his state of mind and he considers that this treatment only 'subjects him to psychotropic behaviour'.

After the psychiatric examination, the defendant was sent to the EEG department to undergo a specialist examination.

The results of that examination are attached to the report.

Report

The examination of the defendant Andrzej Kudła, male, 33 years of age, and the analysis of the results of previous examinations and medical and psychological observations performed during hospitalisation lasting several weeks show that his current mental state is the result of his personality disorders and predisposition to decompensation in difficult situations. These disorders are not psychotic in nature but further suicide attempts will prove to be a real threat to his health. For this reason, we also consider that if the legal proceedings require that the defendant spend a further period in prison, he should be sent to a hospital ward and be supervised by specialist staff. He should also be guaranteed access to a psychiatrist and a psychologist.

Expert *Expert*

Dr Elżbieta Skupień Dr Andrzej Zięba"

41. On 6 October 1995 the applicant received the statement of the reasons for the judgment and, at some date thereafter, lodged an appeal. The case file was transferred to the Cracow Court of Appeal on 14 November 1995.

42. On 22 February 1996 the Court of Appeal quashed the conviction and ordered a retrial on the ground that the trial court had been incorrectly constituted and that there had been numerous breaches of procedural provisions. During the appellate hearing the applicant's lawyer had asked the court to quash the detention order, but without success.

43. On 11 April 1996 the case file was sent to the Regional Court. The Regional Court subsequently made a severance order and thereafter the applicant was tried separately from several other defendants.

44. On 30 April 1996 the applicant requested that the preventive measure imposed on him be lifted or varied. On 28 May 1996 the Cracow Regional Court gave a decision in which it stated, *inter alia*:

"... At the present stage of the case, proper conduct of the proceedings can be ensured by imposing preventive measures other than detention. ... The Court therefore quashes the detention order on condition that the applicant puts up bail of PLN 10,000 within one month from the date on which this decision is served on him. ..."

45. The applicant appealed against that decision and requested that the bail be reduced and set in the light of his financial circumstances or, alternatively, that the court secure proper conduct of the trial by ordering him to submit to police supervision.

46. On 11 June 1996 the trial court received a report from a psychiatric expert it had appointed. The expert found that the applicant was in a state of chronic depression accompanied by suicidal thoughts. He considered that the applicant was able to participate in hearings but that continuing detention could jeopardise his life because of the likelihood that he would attempt to commit suicide.

47. On 20 June 1996 the Cracow Court of Appeal dismissed the applicant's appeal against the decision of 28 May 1996, holding that the sum set for bail was not excessive, given the cost of the damage resulting from the commission of the offences with which he had been charged and the serious nature of those offences. The court attached considerable importance to the fact that after the first order for his detention had been quashed in July 1992, the applicant had absconded and had been redetained on that ground. Bail, the court added, was designed to secure his presence at the trial and to prevent him from committing any further acts aimed at obstructing the proper course of the proceedings. Having regard to all the circumstances of his case, bail had

therefore been set at an appropriate level.

48. Shortly afterwards, the applicant complained to the Ombudsman (*Rzecznik Praw Obywatelskich*) that the overall length of his detention had now exceeded three years. The complaint was referred to the President of the Cracow Court of Appeal, who on 12 July 1996 sent a letter to the applicant. The relevant part of that letter reads:

> "... You were indicted for fraud and forgery on 30 April 1992. The bill of indictment concerned ten co-defendants and evidence from ninety-eight witnesses was to be obtained. The proceedings were delayed because you had been in hiding until your subsequent detention in October 1993. You have also made numerous applications for release. ... The delay in the proceedings between the date of the trial court's judgment and the date on which the case file was sent to the Court of Appeal was justified by the size of your case file and the length of the statement of reasons for the judgment (29 volumes and 140 pages respectively). ... The statement of reasons was ready before 16 August 1995 and was sent out on 16 September 1995 because the judge rapporteur was on leave. The only delay occurred in respect of handling your application for release of 30 April 1996[;] it was examined on 28 May 1996 since from 1 May to 5 May 1996 there had been a public holiday. ..."

49. Meanwhile, the applicant had again applied to the Cracow Regional Court to release him under police supervision or to reduce the bail set by the court on 28 May 1996. On 2 July 1996 the court refused the application. The applicant's lawyer appealed against that decision and argued that in the light of the psychiatric report of 11 June 1996 the applicant should be released because his life was in danger.

50. On 18 July 1996 the Cracow Court of Appeal dismissed the appeal, pointing out that the danger to the applicant's life was "not absolute" because he could obtain psychiatric treatment in prison. The court considered that, given the applicant's behaviour after his release in July 1992, his detention should continue in order to secure the proper course of the trial unless he put up bail of PLN 10,000.

51. On 31 July 1996 the applicant again requested the Regional Court to reduce the amount of security or to release him under police supervision. He submitted that he did not have sufficient financial resources to pay such a substantial sum of money. On 19 August 1996 the court dismissed his application as manifestly ill-founded. It observed that the applicant's arguments concerning the question of bail had been an "unjustified dispute with the institutions of justice" and that bail could be put up not only by the applicant himself but also by third parties.

52. Later, the applicant requested the Regional Court to release him so that he could provide the required security. On 10 September 1996 the court dismissed this request, holding, *inter alia*:

> "... It is logical that [the applicant] should be released after bail is paid. The accused's request to reverse the sequence of events is against the rules of procedure and common sense and must therefore be dismissed. ..."

53. The retrial was to start on 10 October 1996 but was postponed because one of the applicant's co-defendants had meanwhile been detained in connection with other criminal proceedings against him.

54. On 29 October 1996 the Cracow Regional Court quashed the detention order after the applicant's family had paid bail of PLN 10,000 to the court.

55. The next two hearings were listed for 18 March and 17 April 1997 but the trial was again postponed as another co-defendant was ill. Subsequent hearing dates were set for 6, 21 and 23 October 1997. The Regional Court later listed hearings for the following dates in 1998: 15 January, 26 February, 19 March, 6 and 28 April, 2, 22 and 24 June, 13 July, 23 September, 3 and 30 October, and 17 and 24 November. On 4 December 1998 the court gave judgment. The applicant was convicted as charged and sentenced to six years' imprisonment.

56. He appealed on 19 April 1999. On 27 October 1999 the Cracow Court of Appeal varied the trial court's judgment and reduced the applicant's sentence to five years' imprisonment.

57. Subsequently the applicant lodged a cassation appeal (*kasacja)*. On 24 February 2000 the Cracow Court of Appeal, having found that the applicant had complied with the relevant formal requirements for such appeals, forwarded his appeal to the Supreme Court (*Sąd Najwyższy*). The proceedings in the Supreme Court are still pending.

B. MEDICAL TREATMENT RECEIVED BY THE APPLICANT DURING HIS DETENTION FROM 4 OCTOBER 1993 TO 29 OCTOBER 1996, AS SHOWN BY THE MEDICAL REGISTER KEPT BY CRACOW REMAND CENTRE

58. The applicant was held at Cracow Remand Centre from 4 October 1993 to 29 October 1996, with only one interruption: on 9 March 1994 he was transferred to Wrocław Prison Hospital where, until 26 May 1994, he underwent psychiatric observation ordered in other criminal proceedings against him.

59. The medical register shows that the applicant was examined by a doctor shortly after being detained. On 6 October 1993 the applicant asked to be examined by a psychiatrist. The examination took place on 15 October. The applicant was diagnosed as suffering from *reactio situatione* (situational reaction). He had been examined by or had consulted a prison doctor on three previous occasions.

60. In November 1993 the applicant was examined by prison doctors eight times. It was recorded that he was suffering from chronic insomnia and lack of appetite and, subsequently, from recurring headaches, dizziness and difficulty in concentrating.

61. On 10 December 1993 the applicant was examined by a psychiatrist. He was diagnosed as suffering from personality disorder and depressive reaction. During that month, on four further occasions, he consulted or was examined by doctors in the prison outpatient ward. He complained of insomnia and requested a change of medicine. On 24 December 1993 a doctor recommended that he be examined by a psychiatrist.

62. On 4 January 1994 the applicant started to complain about darkness in front of his eyes and headaches.

63. On 26 January 1994 the applicant attempted suicide by taking an overdose. The doctor on duty made the following entry:

> "Patient unconscious, no verbal contact. ... From the report given by [his cell-mates] it transpires that yesterday he took the evening dose of medication ... nobody saw him taking any other medication.
>
> Diagnosis: *intoxicatio medicamentosa acuta per os susp.* [suspected acute drug poisoning by mouth].
>
> Medical recommendations: hospital observation and urgent psychiatric treatment."

64. The applicant was admitted to the prison hospital and stayed there from 27 to 28 January 1994, the diagnosis being "*status post intoxicationem medicamentosam*". He underwent several medical tests (blood-cell morphology, toxicological examination of urine, electrocardiography).

65. On 27 February 1994 the applicant was examined by a psychiatrist and diagnosed as suffering from neurotic disorder.

66. From 26 May 1994 (the date of his return from Wrocław Prison Hospital) to the beginning of November 1994 the applicant consulted the prison outpatient doctors on thirteen occasions. He complained mainly about difficulty in getting to sleep and recurring headaches lasting several days but also about cold and skin ailments. In September 1994 he asked several times for an appointment with a psychiatrist. He was examined by a psychiatrist on 9 November 1994 and diagnosed as having neurotic disorder.

67. In the meantime, on 5 November 1994, the prison doctor on duty had asked for a further appointment with a psychiatrist for the applicant. The psychiatrist examined the applicant on 7 December 1994 and confirmed his previous diagnosis. The register records that the applicant complained about dizziness and sleep disorder.

68. On 2 January 1995 the doctor on duty requested a follow-up appointment with a psychiatrist for the applicant. On 11 and 13 January 1995 the doctor noted that the applicant had not reported back to him. On 16 January 1995 the applicant was given an unspecified medicine.

69. On 23 January 1995 the applicant attempted to commit suicide by hanging himself. On that day doctors made two notes in the medical register. The relevant part of the first note, written by the doctor on duty, reads:

> "At approximately 4.30 a.m. he made a conspicuous attempt to commit suicide by hanging himself on a sanitary appliance on the wall. Blood pressure 110/60 ... In the left nostril was a small amount of foaming blood. Abrasions of the epidermis were found on the neck consistent with the scars of a hanging victim. ... He does not want to communicate orally. ...
>
> Diagnosis: conspicuous attempt to commit suicide by hanging.
>
> Medical recommendations: psychiatric test ..."

The second note, made by a specialist in internal medicine, reads as follows:

> "General condition good. ... Able to communicate logically. He stated that this had not been his first attempt at suicide.

Diagnosis: condition following attempted suicide.

Medical recommendations: psychiatric test. Admission to hospital for treatment not required."

70. On 24 January 1995 the applicant was examined by a psychiatrist, who made the following report:

"Good verbal communication, emotions satisfactory. ... He was in the psychiatric ward of Wrocław Prison Hospital ... to June 1994. Attempted suicide: 'I can't take any more.' He is anxious. Disturbed sleep, loss of appetite, nausea, vomiting. The case has lasted three years – without a judgment, he had no previous convictions. He was frightened by his actions: 'I don't know what came over me.'

Diagnosis: condition following attempted suicide by hanging. Situational depressive reaction."

71. On 3 February 1995 the applicant was again examined by a psychiatrist. The doctor's note reads:

"Good contact. Full orientation, balanced mood. No psychotic symptoms. Complains: 'I feel unwell, I have had enough of this, I do not sleep well, I will hang myself.'

Diagnosis: personality disorder; auto-aggressive reaction."

72. In March 1995 the applicant was examined by doctors six times. Two of those examinations were carried out by psychiatrists. The relevant part of a medical certificate issued after the first examination reads:

"Cracow, 7 March 1995

Medical Certificate

As to the state of health of the prisoner

Prisoner's complaints, previous illnesses and operations: He is currently submitting the following complaint: difficulty concentrating, psychomotor agitation, feelings of inner tension, recurring pain in the epigastric region. Medical history shows frequent attempts at suicide, including by hanging and drug overdose. He is under regular psychiatric supervision. ...

Psychiatric consultation 7 March 1995. Situational reaction with depressive features. Fit to take part in court proceedings. ..."

After the second examination, carried out on 31 March 1995, a doctor noted:

"Good contact, full orientation, dysphoric mood. Complaints – tension ... sleep disorder, difficulty in concentrating.

Diagnosis: neurotic disorder."

73. From the beginning of April to the end of December 1995 the applicant, either at his own request or at the request of prison doctors, was examined by psychiatrists at least once a month. Apart from that, he received treatment for other ailments. As regards the applicant's mental state, it appears from the medical register that he repeatedly complained of depression, sleep disturbances, tension, difficulty in concentrating, irritation and lack of improvement of his condition.

74. In the period from the beginning of January to the end of August 1996 the applicant was examined by doctors on thirty-two occasions; twelve examinations were carried out by psychiatrists.

II. RELEVANT DOMESTIC LAW AND PRACTICE

75. At the material time the rules governing detention on remand were contained in Chapter 24 of the Law of 19 April 1969 – Code of Criminal Procedure (*Kodeks postępowania karnego*) – entitled "Preventive measures" (*Środki zapobiegawcze*). The Code is no longer in force. It was repealed and replaced by the Law of 6 June 1997 (commonly referred to as the "New Code of Criminal Procedure"), which entered into force on 1 September 1998.

76. The Code listed as "preventive measures", *inter alia*, detention on remand, bail and police supervision.

Article 209 set out the general grounds justifying imposition of the preventive measures. This provision read:

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

Article 217 § 1 defined grounds for detention on remand. The relevant part of this provision, in the version applicable until 1 January 1996, provided:

"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 he has no fixed residence [in Poland] or his identity cannot be established; or

(2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means; or

(3) an accused has been charged with a serious offence or has relapsed into crime in the manner defined in the Criminal Code; or

(4) an accused has been charged with an offence which creates a serious danger to society.

..."

On 1 January 1996 sub-paragraphs 3 and 4 of Article 217 § 1 were repealed and the whole provision was redrafted. From that date onwards the relevant sub-paragraphs read:

"(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 abode [in Poland]; or

(2) [as it stood before 1 January 1996]."

Paragraph 2 of Article 217 provided:

"If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years' imprisonment, or if a court of first instance has sentenced him to at least three years' imprisonment, the need to continue detention in order to secure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed."

The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

Article 213 § 1 provided:

"A preventive measure [including detention on remand] shall be immediately lifted or varied if the basis for it has ceased to exist or new circumstances have arisen which justify lifting a given measure or replacing it with a more or less severe one."

Article 225 stated:

"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 those measures, are considered adequate."

The provisions for "mandatory detention" (for instance, detention pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes.

Finally, Article 218 stipulated:

"If there are no special reasons to the contrary, detention on remand should be lifted, in particular, if:

(1) it may seriously jeopardise the life or health of the accused; or

(2) it would entail excessively burdensome effects for the accused or his family."

77. Under Polish law "release on bail" does not mean release on condition that a detainee undertakes to pay a specified sum to the court if he fails to appear before it, but release on condition that the required security is paid to the court by either the detainee himself or sureties before the detainee is released.

78. Article 219 of the Code dealt with medical treatment of an accused during detention on remand. It provided the following:

"If the state of health of an accused requires treatment in a medical establishment, he cannot be further detained except in such an establishment."

79. Article 214 of the Code of Criminal Procedure provided that an accused could at any time lodge an application for release. It read:

"An accused may at any time apply to have a preventive measure lifted or varied.

Such an application shall be decided by the prosecutor or, after the bill of indictment has been lodged, by the court competent to deal with the case, within a period not exceeding three days."

80. Article 371 § 1 of the Code laid down a time-limit for preparing the statement of reasons for the judgment of the trial court where an appeal had been brought. The relevant provision read:

"The statement of the reasons for the judgment shall be prepared within seven days from the date on which a notice of appeal has been lodged; in a complex case, when it is impossible to prepare it within the prescribed time, the president of the court may extend that time for a specified period ..."

81. The Code set out two principal appellate remedies, called "appellate measures": an appeal, which, under Articles 374 et seq., could be brought solely against judgments and an interlocutory appeal which, under Articles 409 et seq., could be brought against decisions other than judgments and against orders for preventive measures. There was (and still is) no specific provision expressly providing for remedies against inactivity on the part of the judiciary in the course of criminal proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

82. The applicant claimed that he had not received adequate psychiatric treatment when in detention from 4 October 1993 onwards. He had been held at Cracow Remand Centre, where there had been no psychiatric ward and where no serious effort to treat his chronic depression had been made. In his submission, this had resulted in his repeated attempts to commit suicide in prison and constituted inhuman and degrading treatment within the meaning of Article 3 of the Convention, which provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

83. The applicant asserted that Article 219 of the Code of Criminal Procedure imposed an obligation on the authorities to at least consider whether his state of health was such as to require that he be placed in an appropriate medical establishment (see paragraph 78 above). Indeed, they had been well aware that he had suicidal tendencies, which had inevitably been aggravated by the extreme conditions of imprisonment. They had had before them abundant evidence to that effect because he had previously been released pending trial in view of the danger to his life posed by his continued detention.

84. From 4 October 1993 to 29 October 1996, that is to say for three years, he had again been detained on remand. During that time he had only once received treatment in a "medical establishment" within the meaning of Article 219. In March 1994, the court had placed him for several months in the psychiatric ward of Wrocław Prison Hospital. In the applicant's view, the court had done so only because his state had markedly deteriorated after his suicide attempt in January 1994.

85. The applicant further maintained that, after that short period of specialist treatment, he had again been transferred to Cracow Remand Centre where he had received no medication that could have prevented him from making further suicide attempts and where he had been detained in difficult prison conditions together with convicted criminals. This he had found psychologically unbearable, and on 23 January 1995 he had again attempted to commit suicide. He contended that the prison authorities had arbitrarily and groundlessly labelled the suicide attempt as being not genuine, but of an attention-seeking nature and they had reported the event to the court in that manner. They had not mentioned that a day later a psychiatrist had diagnosed his behaviour as a "situational depressive reaction".

Despite that diagnosis, he added, the authorities had not done anything substantial to improve his condition or to provide him with adequate psychiatric assistance. Not only had the trial court failed to ensure continuous supervision of his health and of the conditions of his detention but it had taken no notice of the doctors' reports on his state either. In particular, he had been held in prison from 11 June to 29 October 1996 even though on the first of those dates the psychiatric expert had assessed his state as very serious and stated that his continued detention had been putting his life at risk. In sum, keeping him in detention regardless of the fact that it could have endangered his life and failing to give him adequate medical assistance amounted to treatment contrary to Article 3 of the Convention.

86. The Government disputed that – apart from the applicant's subjective feelings – the treatment complained of had attained the minimum level of severity required to fall within the scope of Article 3. They

first of all maintained that in the light of the medical evidence produced by them before the Court, there could be no doubt that the relevant authorities had carefully and frequently monitored the applicant's state of health and provided him with medical assistance appropriate to his condition.

87. As to whether the authorities had fulfilled their obligation to place the applicant in an "appropriate medical establishment", pursuant to Article 219 of the Code of Criminal Procedure, the Government pointed out that the medical records showed that he had been admitted to prison hospitals whenever it had proved necessary. Apart from the aforementioned observation in Wrocław, he had been placed in hospital after his second suicide attempt. That being so, no shortcomings on the part of the authorities could be found in that respect.

88. Nor could it be said, the Government added, that the courts had not checked whether the applicant had received proper medical assistance or had not made sure whether his condition had been compatible with continued detention. They had frequently asked the prison services about the applicant's health and, where necessary, inspected the findings of psychiatric examinations or even intervened with a view to improving the situation. For instance, the trial court had immediately reacted to the applicant's complaint about the psychiatric treatment received in prison (which he had made on 7 December 1994) and had asked the relevant prison services for an explanation. In addition, the court had on several occasions asked psychiatrists to prepare reports on the applicant's health.

89. In conclusion, the Government invited the Court to uphold the opinion expressed by the dissenting members of the Commission, who had considered that while it might well be argued that the authorities should have paid more attention to the applicant's psychiatric condition, they had nevertheless not exposed him to suffering of such severity as to constitute inhuman or degrading treatment.

90. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 69, ECHR 1999-IX, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

91. However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, the Raninen v. Finland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2821-22, § 55).

92. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, *mutatis mutandis*, the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 15, § 30; the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 39, § 100; and *V. v. the United Kingdom* cited above, § 71).

93. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment.

94. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see, *mutatis mutandis*, the Aerts v. Belgium judgment of 30 July 1998, *Reports* 1998-V, p. 1966, §§ 64 et seq.).

95. The Court observes at the outset that in the present case it was not contested that both before and during his detention from 4 October 1993 to 29 October 1996 the applicant had suffered from chronic depression and that he had twice attempted to commit suicide in prison. His state had also been diagnosed as personality or neurotic disorder and situational depressive reaction (see paragraphs 58-67 and 69-72 above).

96. The Court further observes that the medical evidence which the Government produced to it (but not to the Commission) shows that during his detention the applicant regularly sought, and obtained, medical attention. He was examined by doctors of various specialisms and frequently received psychiatric assistance (see paragraphs 59-74 above). From the beginning of October to the end of December 1993 he had several times been examined by psychiatrists in prison (see paragraphs 59-61 above). At the end of 1993 the trial court obtained a report from a psychiatrist confirming that his state of health was at that time compatible with detention (see paragraph 21 above *in fine*).

Shortly after his 1994 suicide attempt, an event which in the light of the evidence before the Court does not appear to have resulted from or have been linked to any discernible shortcoming on the part of the authorities, the applicant was given specialist treatment in the form of psychiatric observation in Wrocław Prison Hospital from 9 March to 26 May 1994 (see paragraph 58 above). Later, after the observation in Wrocław, he also underwent two further follow-up examinations, on 9 November and 7 December 1994 (see paragraphs 66-67 above).

97. Admittedly, that did not prevent him from making another attempt to take his life in January 1995 (see paragraph 69 above). However, the Court, while it does not consider it necessary to express a view on whether that attempt was, as the authorities asserted, of an attention-seeking character or a manifestation of the suffering caused by his disorder, does not find on the material before it anything to show that they can be held responsible for what happened.

98. Similarly, the Court cannot discern any subsequent failure on their part to keep the applicant under psychiatric observation. On the contrary, it finds that from the beginning of 1995 to his release on 29 October 1996 the applicant was examined by a psychiatrist at least once a month. In 1996 alone, that is to say, before being released, he underwent twelve such examinations (see paragraphs 70-74 above).

99. The Court accepts that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. It also takes note of the fact that from 11 June to 29 October 1996 the applicant was kept in custody despite a psychiatric opinion that continuing detention could jeopardise his life because of a likelihood of attempted suicide (see paragraphs 46-50 above). However, on the basis of the evidence before it and assessing the relevant facts as a whole, the Court does not find it established that the applicant was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

100. Accordingly, there has been no violation of that Article in the present case.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

101. The applicant complained, secondly, that his detention on remand had been excessive and he alleged a violation of Article 5 § 3 of the Convention, the relevant part of which 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."

A. PERIOD TO BE TAKEN INTO CONSIDERATION

102. In the proceedings in question the applicant was twice detained on remand. He was detained for the first time on 8 August 1991 and remained in custody for nearly a year, that is to say, until 27 July 1992. Then, he was arrested on 4 October 1993 and thereafter spent some three years in detention before being released on bail on 29 October 1996 (see paragraphs 10, 18-20 and 54 above).

103. However, as Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect on 1 May 1993, the period of the applicant's detention before

that date lies outside the Court's jurisdiction *ratione temporis*.

104. Furthermore, the Court reiterates that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see, for example, the B. v. Austria judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). Accordingly, the applicant's detention from 1 June 1995, the date of his original first-instance conviction, to 22 February 1996, the date on which that conviction was quashed and his case remitted, cannot be taken into account for the purposes of Article 5 § 3.

105. The Court consequently finds that the period to be taken into consideration consisted of two separate terms, the first lasting from 4 October 1993 to 1 June 1995 and the second from 22 February to 29 October 1996, and amounted to two years, four months and three days.

B. REASONABLENESS OF THE LENGTH OF DETENTION

106. The applicant submitted that the authorities had failed to give sufficient grounds for his detention. First of all, there had been no valid reason justifying his detention from 4 October 1993 onwards, because he had submitted a medical certificate confirming that he had been on sick-leave and had therefore duly justified his absence from the hearings in February and March 1993. Furthermore, it had been evident from the very beginning that the imposition of measures other than detention – such as bail or police supervision, or both of those measures – could have secured his presence at the trial.

107. In any event, he submitted, pre-trial detention lasting two years and four months could not be regarded as "reasonable". Indeed, in the proceedings in issue, he had spent in detention not merely these two years and four months falling within the Court's jurisdiction *ratione temporis* and within the ambit of Article 5 § 3, but a total of four years and thirteen days.

108. The Government replied that the main reason why the applicant had been redetained on 4 October 1993 had not been his failure to appear before the court in February and March 1993 but his lawyer's failure to comply with the time-limit set for submitting a forensic expert's medical certificate as to the applicant's state of health.

109. The applicant's detention, they argued, had resulted from his own behaviour. It was imposed in view of the risk of his absconding because he had absconded after his release in July 1992. Subsequently the trial court had considered releasing the applicant on bail. In order to lessen the risk of his absconding again, it had set bail at 10,000 zlotys (PLN), a sum which had been appropriate for the damage caused by the commission of the offences in question but which the applicant had regarded as excessive and had not secured for several months. The delay in his release had therefore been due to the late payment of the required security and had been caused by the applicant himself. The authorities, the Government considered, had displayed due diligence in handling his case and there had been no periods of inertia attributable to their conduct. In view of that, the Government invited the Court to hold that the length of the applicant's detention had not exceeded a "reasonable time" within the meaning of Article 5 § 3 of the Convention.

110. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Labita*, cited above, §§ 152 et seq.).

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given

in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see the Muller v. France judgment of 17 March 1997, *Reports* 1997-II, p. 388, § 35).

111. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings (ibid.).

112. The Court observes that in the instant case it does not appear to be contested that the principal reason why the authorities ordered that a "wanted" notice be issued and the applicant again be detained on remand was his failure to comply with the time-limit for submitting a medical certificate and to indicate an address at which summonses could be served on him during his treatment in Świnoujście (see paragraph 19 above). On those two facts the Cracow Regional Court and the Cracow Court of Appeal based their opinion that there was a risk that the applicant would abscond, a risk which justified his being detained to ensure the proper conduct of the proceedings. The courts reiterated that opinion in nearly all their decisions dismissing the numerous applications for release he made in the years following his arrest on 4 October 1993 (see paragraphs 29-34 above).

113. Again, the risk of his absconding was one of the main factors that the Regional Court took into account when determining the amount of bail required from the applicant (see paragraphs 44-47 above). That risk warranted his detention pending a decision on the value of the security (see paragraphs 49-54 above) and, apart from the reasonable suspicion that the applicant had committed the offences of fraud and forgery, was indeed the main reason why he was held in detention for the period in issue.

114. The Court agrees that that basis, in addition to the suspicion that the applicant had committed the criminal offences in question, could initially suffice to warrant his detention. However, with the passage of time that ground inevitably became less relevant and, given that before being redetained on 4 October 1993 the applicant had already spent nearly a year in detention (see paragraphs 10-18 and 102-03 above), only very compelling reasons would persuade the Court that his further detention for two years and four months was justified under Article 5 § 3.

115. In the instant case the Court has not found any such reasons, especially as the courts, despite repeatedly referring to the two aforementioned instances of the applicant's failure to comply with a court order, did not mention any other circumstance capable of showing that the risk relied on actually persisted during the entire relevant period.

116. The Court accordingly concludes that the reasons relied on by the courts in their decisions were not sufficient to justify the applicant's being held in detention for the period in question.

117. There has, therefore, been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

118. The applicant further maintained that his right to a trial "within a reasonable time" had not been respected and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. PERIOD TO BE TAKEN INTO CONSIDERATION

119. There was no dispute over when the proceedings started; it was common ground that the relevant date was 8 August 1991, when the applicant was charged. The parties did, however, disagree over whether the proceedings could be regarded as still pending for the purposes of Article 6 § 1.

120. The applicant asserted that the "charge against him" had not yet been determined because the

examination of the merits of his cassation appeal was pending in the Supreme Court.

121. The Government argued that the trial had ended on 27 October 1999, when the Cracow Court of Appeal delivered the final judgment and that it was irrelevant whether or not the applicant had lodged a cassation appeal with the Supreme Court, because that appeal was an exceptional remedy whereby only final judgments could be contested.

122. The Court reiterates that Article 6 § 1 does not compel the States to set up courts of appeal or of cassation. Nevertheless, a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before them the fundamental guarantees contained in Article 6 (see, among other authorities, the Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11 pp. 13-15, § 25, and the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, *Reports* 1997-VIII, p. 2956, § 37).

While the manner in which Article 6 is to be applied in relation to courts of appeal or of cassation depends on the special features of the proceedings in question, there can be no doubt that appellate or cassation proceedings come within the scope of Article 6 (see, *mutatis mutandis*, the Twalib v. Greece judgment of 9 June 1998, *Reports* 1998-IV, pp. 1427-28, § 46). Accordingly, the length of such proceedings should be taken into account in order to establish whether the overall length of the proceedings was reasonable.

123. Consequently, and in the absence of any evidence to show that the Supreme Court has already given a ruling in the applicant's case, the Court finds that the proceedings have so far lasted for more than nine years. However, given its jurisdiction *ratione temporis* (see paragraph 103 above), the Court can only consider the period of seven years and some five months which have elapsed since 1 May 1993, although it will have regard to the stage reached in the proceedings on that date (see, for instance, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. REASONABLENESS OF THE LENGTH OF THE PERIOD IN ISSUE

124. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see, among many other authorities, the Philis v. Greece (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35, and the Portington v. Greece judgment of 23 September 1998, *Reports* 1998-VI, p. 2630, § 21).

125. The applicant submitted that the judicial authorities themselves had made his case complex because they had organised the trial badly. First of all, there had been nine co-defendants indicted together with the applicant, even though the charges against them had had no connection with those laid against him. This had resulted in ninety-eight witnesses being summoned; however, the testimony of only seven of them had been relevant to the applicant's case. Secondly, at the original trial, the court had been improperly constituted, and that had resulted in the judgment being quashed and a retrial ordered. Thirdly, the court made a late severance order and had eventually dealt with his case separately after his original first-instance conviction had been quashed. Had it done that at the outset, the charges against him would have been determined sooner.

126. The applicant went on to argue that the inefficient manner in which the authorities had handled his case had been the main reason why the proceedings had lasted for so long. Furthermore, over the lengthy period of nineteen months from February 1996 to September 1997, the Regional Court had failed to display due procedural diligence. The courts were therefore wholly responsible for the excessive length of his trial.

127. The Government disagreed and argued that the case was complex on account of the volume of evidence, the number of charges against the applicant and his co-defendants and the large number of the witnesses heard.

128. In their view, the applicant had substantially contributed to prolonging the proceedings. He had failed to appear at a number of hearings. He had absconded, causing a stay in the trial from March to October 1993. The psychiatric observation undergone by him and the need to place him in hospitals had also caused delays. In sum, the length of the proceedings had been attributable mainly to his conduct.

129. Referring to the conduct of the relevant authorities, the Government pointed out that there had been

no sign of inactivity on their part. On the contrary, the courts had shown due diligence in handling the case and, although there had been some, albeit negligible, delays on their part, the "reasonable time" requirement had nevertheless been complied with in the applicant's case.

130. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

It is true that in February and March 1993 the applicant failed to appear before the court and that, as a result, the trial was adjourned to October 1993 (see paragraphs 19-21 above). However, the Court finds no evidence to demonstrate that at any subsequent stage of the proceedings the applicant showed dilatory conduct or otherwise upset the proper conduct of the trial. In view of that, the Court considers that his conduct did not contribute substantially to the length of the proceedings.

The Government maintained that the courts, although responsible for some delays, had not on the whole failed to determine the case within a reasonable time. The Court observes, however, that the duty to administer justice expeditiously was incumbent in the first place on them, especially as during the substantial part of his trial the applicant had been in custody and had suffered from serious depression. This required particular diligence of them in dealing with his case.

In this connection the Court notes that after the applicant's original first-instance conviction was quashed on 22 February 1996, the retrial was scheduled for 10 October 1996 but began only on 18 March 1997, that is to say, after a lapse of more than a year. It was then postponed to October 1997 (see paragraphs 42 and 53-55 above). Admittedly, the postponement was – at least in some part – caused by events attributable to the applicant's co-defendants (see paragraphs 53 and 55 above). Nevertheless, that lack of progress in the proceedings resulted in a total delay of nearly one year and eight months, a delay for which the Court does not find a sufficient justification and which it considers incompatible with the diligence required under Article 6 § 1.

131. Accordingly, the Court cannot regard the period of time that elapsed in the instant case as reasonable.

There has, therefore, been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

132. The applicant submitted, lastly, that he had had no effective remedy whereby to raise the issue of the excessive length of the proceedings in his case before a national authority. In his view, there had, accordingly, been a violation of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

133. In the present case the Court has been invited to determine the scope of the Contracting States' obligation under Article 13 to provide a person with an "effective remedy before a national authority" if the Convention right asserted by the applicant is the right to a "hearing within a reasonable time" guaranteed by Article 6 § 1. The applicant argued that Article 13 should be interpreted as requiring such an "effective remedy"; the Government disputed that. The Commission did not find it necessary to determine this issue.

A. ARGUMENTS OF THE PARTIES

1. THE APPLICANT

134. The applicant, both in his memorial and at the hearing before the Court, relied heavily on the opinion of the dissenting members of the Commission, who had considered not only that it was necessary to examine his complaint under Article 13 but also that there had been a breach of that provision. In addition, he referred to the Commission's report in the case of Mikulski v. Poland (application no. 27914/95, Commission's report of 10 September 1999, unpublished), in which the Commission, having found no violation of Article 6 § 1 of the Convention in respect of the length of criminal proceedings against the applicant, had nevertheless

expressed the view that there had been a violation of Article 13 on account of the lack of any remedy whereby he could have put the substance of his complaint about the length of those proceedings before a competent national authority.

135. The applicant considered, as the Commission had done in the Mikulski report, that even though in certain cases Article 6 § 1 could be seen as a *lex specialis* in relation to Article 13 – for instance in cases where a person complained that his right of access to a tribunal had not been respected – the same did not hold true for complaints about infringements of the right to a hearing within a reasonable time. In such cases Article 13 of the Convention should in principle apply irrespective of whether a violation of Article 6 § 1 had been found.

136. He also pointed out that an individual's entitlement to an effective remedy under Article 13 did not depend on whether or not a violation of his Convention rights had in fact been found but on whether he had an arguable claim that those rights had been violated.

137. According to the applicant, Polish legislation had not provided any legal remedy whereby he could have effectively contested the length of the criminal proceedings against him and had his right to a "hearing within a reasonable time" enforced. In consequence, his right to an "effective remedy before a national authority" within the meaning of Article 13 had not been respected.

2. THE GOVERNMENT

138. The Government disagreed with the applicant on all points. In their memorial they subscribed to the view expressed by the majority of the Commission and maintained that it was not necessary to examine whether in the present case there had also been a violation of Article 13 of the Convention on account of the alleged absence of an "effective domestic remedy" against excessive length of proceedings.

139. At the hearing, they further argued that the approach adopted by the Commission in the Mikulski case had been inconsistent with the Court's established case-law on the relationship between Articles 6 § 1 and 13 of the Convention and that the Commission's opinion in that case was entirely unsupported by the *ratio legis* of the latter provision. In that context, they stressed that the Court had given numerous judgments – they referred in particular to those in the cases of Kadubec v. Slovakia (judgment of 2 September 1998, *Reports* 1998-VI) and Brualla Gómez de la Torre (judgment cited above) – in which it had consistently held either that "the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6" or that "the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by those of Article 6 § 1". It was noteworthy that the Court had applied the same *lex specialis* approach in respect of Article 5 § 4 of the Convention which, like Article 6 § 1, guaranteed a right of a strictly procedural character.

140. The Government also referred to the cases of Pizzetti v. Italy, judgment of 26 February 1993, Series A no. 257-C, *Giuseppe Tripodi v. Italy*, no. 40946/98, 25 January 2000, unreported, and *Bouilly v. France*, no. 38952/97, 7 December 1999, unreported, maintaining that the Court, after finding a violation of the right to a "hearing within a reasonable time", had consistently held that it was not necessary to examine the complaint about the lack of a remedy for the excessive length of those proceedings under Article 13. The Government stressed that the Commission itself had cited that form of words in the present case, referring to the Pizzetti judgment. Yet in the Mikulski case the Commission had deemed that judgment irrelevant because it had found no violation of the right to a hearing within a reasonable time but had considered that the applicant nevertheless had an "arguable claim" that the right had been violated and that the less strict guarantees of Article 13 had therefore come into play.

141. Such a conclusion, the Government maintained, had been inconsistent with the Commission's own approach in the Pizzetti case, in which it had considered that Article 13 was not applicable where the alleged violation of the Convention had taken place in the context of judicial proceedings (see the Pizzetti judgment cited above, opinion of the Commission, pp. 41-42).

142. The Government said that they saw no convincing reason to reconsider the existing clear, consistent case-law of the Court on the relationship between Articles 6 § 1 and 13 of the Convention. In particular, they criticised the Commission's argument in the Mikulski case that, given the very large number of complaints about the excessive length of proceedings, the applicability of Article 13 to the right to a hearing within a reasonable time might be of considerable practical importance in giving effect at domestic level to one of the fundamental procedural guarantees in Article 6. On the contrary, they argued that creating a separate, new remedy – which would for all practical purposes mean establishing an additional right of appeal – could only prolong the length of proceedings in domestic courts.

143. In that connection, they asserted that if a State had a backlog of business in its system of justice, it would not seem reasonable to remedy the situation by requiring that State to create a new judicial or other means of complaining about delays in proceedings. The length of proceedings should be looked on as a structural dysfunction and more comprehensive measures would be needed to counteract it.

144. Furthermore, the Government added, carrying literal interpretation *ad absurdum* would lead to the conclusion that there should also be an "effective remedy before a national authority" for persons who complained of a violation of Article 13. For all those reasons the Government concluded that Article 6 § 1 of the Convention was a *lex specialis* in relation to Article 13 and that consequently the latter provision did not apply to cases in which the applicant's complaint about the length of proceedings was examined under Article 6 § 1.

145. The Government finally submitted that should the Court find it necessary to examine the case under Article 13, there had been no violation of that provision. They acknowledged that there was no single, specific remedy in Poland whereby to complain about delays in judicial proceedings. However, they were of the opinion that in the criminal proceedings against him the applicant could have raised the issue of their length in his appeals against decisions to prolong his detention or in the applications for release he made under Article 214 of the Code of Criminal Procedure (see paragraph 79 above). The applicant could also have lodged a complaint with the president of the court dealing with his case or with the Minister of Justice. That would have resulted in those persons' putting his case under their administrative supervision. The administrative supervision might, in principle, have resulted in disciplinary sanctions being imposed on the judge if he or she had failed to conduct the trial effectively and expeditiously.

Although it could not give any direct redress to such a complainant, the Government maintained that the aggregate of remedies referred to by them satisfied the requirements of Article 13 of the Convention.

B. THE COURT'S ASSESSMENT

1. WHETHER IT IS NECESSARY TO EXAMINE THE COMPLAINT UNDER ARTICLE 13

146. In many previous cases in which the Court has found a violation of Article 6 § 1 it did not consider it necessary also to rule on an accompanying complaint made under Article 13. More often than not this was because in the circumstances Article 6 § 1 was deemed to constitute a *lex specialis* in relation to Article 13.

Thus, where the Convention right asserted by the individual is a "civil right" recognised under domestic law – such as the right of property – the protection afforded by Article 6 § 1 will also be available (see, for example, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, pp. 31-32, § 88). In such circumstances the safeguards of Article 6 § 1, implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13 (see, for example, the Brualla Gómez de la Torre judgment cited above, p. 2957, § 41).

The Court has applied a similar logic in cases where the applicant's grievance has been directed at the adequacy of an existing appellate or cassation procedure coming within the ambit of both Article 6 § 1 under its "criminal" head and Article 13 (see the Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, pp. 45-46, § 110 – in relation to nullity proceedings before the Supreme Court).

In such cases there is no legal interest in re-examining the same subject matter of complaint under the less stringent requirements of Article 13.

147. There is, however, no overlap and hence no absorption where, as in the present case, the alleged Convention violation that the individual wishes to bring before a "national authority" is a violation of the right to trial within a reasonable time, contrary to Article 6 § 1. The question of whether the applicant in a given case did benefit from trial within a reasonable time in the determination of civil rights and obligations or a criminal charge is a separate legal issue from that of whether there was available to the applicant under domestic law an effective remedy to ventilate a complaint on that ground. In the present case the issue to be determined before the Article 6 § 1 "tribunals" was the criminal charges brought against the applicant, whereas the complaint that he wanted to have examined by a "national authority" for the purposes of Article 13 was the separate one of the unreasonable length of the proceedings.

In comparable cases in the past, the Court has nonetheless declined to rule on an accompanying complaint of the absence of an effective remedy as guaranteed by Article 13, considering it unnecessary in view of its prior finding of a breach of the "reasonable time" requirement laid down in Article 6 § 1 (see, among other examples, the judgments cited above: Pizzetti, p. 37, § 21; *Bouilly*, § 27; and *Giuseppe Tripodi*, § 15).

148. In the Court's view, the time has come to review its case-law in the light of the continuing accumulation of applications before it in which the only, or principal, allegation is that of a failure to ensure a hearing within a reasonable time in breach of Article 6 § 1.

The growing frequency with which violations in this regard are being found has recently led the Court to draw attention to "the important danger" that exists for the rule of law within national legal orders when "excessive delays in the administration of justice" occur "in respect of which litigants have no domestic remedy" (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V; *Di Mauro v. Italy* [GC], no. 34256/96, § 23, ECHR 1999-V; *A.P. v. Italy* [GC], no. 35265/97, § 18, 28 July 1999, unreported; and *Ferrari v. Italy* [GC], no. 33440/96, § 21, 28 July 1999, unreported).

149. Against this background, the Court now perceives the need to examine the applicant's complaint under Article 13 taken separately, notwithstanding its earlier finding of a violation of Article 6 § 1 for failure to try him within a reasonable time.

2. APPLICABILITY OF ARTICLE 13 TO COMPLAINTS ALLEGING A VIOLATION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

150. The Government argued that Article 13 did not apply to cases in which the applicant's complaint about the length of proceedings was examined under Article 6 § 1. They also referred to the Commission's opinion in the Pizzetti case that Article 13 was not applicable where the alleged violation had taken place in the context of judicial proceedings (see paragraphs 139-44 above).

151. The Court finds nothing in the letter of Article 13 to ground a principle whereby there is no scope for its application in relation to any of the aspects of the "right to a court" embodied in Article 6 § 1. Nor can any suggestion of such a limitation on the operation of Article 13 be found in its drafting history.

Admittedly, the protection afforded by Article 13 is not absolute. The context in which an alleged violation – or category of violations – occurs may entail inherent limitations on the conceivable remedy. In such circumstances Article 13 is not treated as being inapplicable but its requirement of an "effective remedy" is to be read as meaning "a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in [the particular context]" (see the Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, p. 31, § 69). Furthermore, "Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention" (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 47, § 85). Thus, Article 13 cannot be read as requiring the provision of an effective remedy that would enable the individual to complain about the absence in domestic law of access to a court as secured by Article 6 § 1.

As regards an alleged failure to ensure trial within a reasonable time, however, no such inherent qualification on the scope of Article 13 can be discerned.

152. On the contrary, the place of Article 13 in the scheme of human rights protection set up by the Convention would argue in favour of implied restrictions of Article 13 being kept to a minimum.

By virtue of Article 1 (which provides: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention"), the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention.

The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, as a recent authority, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available

in respect of the alleged breach of an individual's Convention rights (ibid.).

In that way, Article 13, giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the *travaux préparatoires* (see the *Collected Edition of the "Travaux Préparatoires" of the European Convention on Human Rights*, vol. II, pp. 485 and 490, and vol. III, p. 651), is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6 § 1, rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings.

153. The Government, however, argued that requiring a remedy for inordinate length of proceedings under Article 13 is tantamount to imposing on States a new obligation to establish a "right of appeal", in particular a right to appeal on the merits, which, as such, is guaranteed only in criminal matters under Article 2 of Protocol No. 7 to the Convention; and that in practice the exercise of such a remedy could only prolong proceedings in domestic courts (see paragraphs 142-43 above).

154. The Court does not accept the Government's submissions.

A remedy for complaining about unreasonable length of proceedings does not as such involve an appeal against the "determination" of any criminal charge or of civil rights and obligations. In any event, subject to compliance with the requirements of the Convention, the Contracting States – as the Court has held on many previous occasions – are afforded some discretion as to the manner in which they provide the relief required by Article 13 and conform to their Convention obligation under that provision (see, for example, the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

As to the suggestion that requiring yet a further remedy would result in domestic proceedings being made even more cumbersome, the Court would observe that even though at present there is no prevailing pattern in the legal orders of the Contracting States in respect of remedies for excessive length of proceedings, there are examples emerging from the Court's own case-law on the rule on exhaustion of domestic remedies which demonstrate that it is not impossible to create such remedies and operate them effectively (see, for instance, *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII, and *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX).

155. If Article 13 is, as the Government argued, to be interpreted as having no application to the right to a hearing within a reasonable time as safeguarded by Article 6 § 1, individuals will systematically be forced to refer to the Court in Strasbourg complaints that would otherwise, and in the Court's opinion more appropriately, have to be addressed in the first place within the national legal system. In the long term the effective functioning, on both the national and international level, of the scheme of human rights protection set up by the Convention is liable to be weakened.

156. In view of the foregoing considerations, the Court considers that the correct interpretation of Article 13 is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time.

3. COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 13

157. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, the Kaya judgment cited above).

The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII).

The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a

favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, the Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 42, § 113, and the Chahal v. the United Kingdom judgment of 15 November 1996, *Reports* 1996-V, pp. 1869-70, § 145).

158. It remains for the Court to determine whether the means available to the applicant in Polish law for raising a complaint about the length of the proceedings in his case would have been "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred.

159. The Court notes at the outset that the Government did not claim that there was any specific legal avenue whereby the applicant could complain of the length of the proceedings but submitted that the aggregate of several remedies satisfied the Article 13 requirements. They did not, however, indicate whether and, if so, how the applicant could obtain relief – either preventive or compensatory – by having recourse to those remedies (see paragraph 145 above). It was not suggested that any of the single remedies referred to, or a combination of them, could have expedited the determination of the charges against the applicant or provided him with adequate redress for delays that had already occurred. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief.

That would in itself demonstrate that the means referred to do not meet the standard of "effectiveness" for the purposes of Article 13 because, as the Court has already said (see paragraph 157 above), the required remedy must be effective both in law and in practice.

160. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

161. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. DAMAGE

162. Under the head of pecuniary damage, the applicant claimed a sum of 480,000 zlotys (PLN) for loss of profits from his commercial activity, caused by his lengthy detention.

The applicant further asked the Court to award him 800,000 United States dollars (USD), or their equivalent in zlotys, for moral suffering and distress resulting from a violation of his Convention rights.

163. The Government considered that the sums in question were inordinately excessive. They requested the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

164. The Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by his being held in custody for the relevant period. Consequently, there is no justification for making any award to him under that head.

165. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of his detention and trial – which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant PLN 30,000 under this head.

B. COSTS AND EXPENSES

166. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of USD 30,400 for costs and expenses incurred in the proceedings before the Court.

167. In their memorial the Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. At the hearing they said that the claim for costs and expenses was excessive in the extreme.

168. The Court has assessed the claim in the light of the principles laid down in its case-law (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Öztürk v. Turkey* [GC], no. 22479/93, § 83, ECHR 1999-VI; and *Witold Litwa v. Poland,* no. 26629/95, § 88, ECHR 2000-III).

Applying the said criteria to the present case and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant PLN 20,000 for his costs and expenses together with any value-added tax that may be chargeable, less the 10,589 French francs received by way of legal aid from the Council of Europe.

C. DEFAULT INTEREST

169. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 21% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 3 of the Convention;

2. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention;

5. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) PLN 30,000 (thirty thousand Polish zlotys) in respect of non-pecuniary damage;
      (ii) PLN 20,000 (twenty thousand Polish zlotys) in respect of costs and expenses, together with any value-added tax that may be chargeable, less FRF 10,589 (ten thousand five hundred and eighty-nine French francs) to be converted into zlotys at the rate applicable at the date of delivery of this judgment;
   (b) that simple interest at an annual rate of 21% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 October 2000.

Luzius WILDHABER
President
Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Casadevall is annexed to this judgment.

L.W.
P.J.M.

PARTLY DISSENTING OPINION OF JUDGE CASADEVALL

(TRANSLATION)

1. I do not share the majority's view that it was necessary for the Court to depart from precedent and hold in the instant case that it had to rule also on the complaint based on an alleged violation of Article 13, that there had been no effective remedy, when it had already found a violation of Article 6 § 1 because a reasonable time had been exceeded in the same proceedings.

2. Given, in particular, the wording of Article 13, which is as succinct as it is broad, there is certainly nothing to prevent its being applied to the various aspects of the "right to a court" embodied in Article 6 § 1[1]. I have no difficulty with that. On the other hand, the complications – of all kinds – that this new case-law is likely to entail for the Court, for the member States and, above all, for the only persons intended to benefit from the protection afforded by the Convention, *the applicants*, make me fear that the cure is worse than the disease, for the following reasons.

3. The first relates to the grounds given for departing from precedent. I can accept, in theory, the reasoning in paragraph 147 of the judgment, according to which there is neither overlap nor absorption where, as in the present case, the alleged violation that the individual wishes to bring before a national authority is a violation of the right to trial within a reasonable time. However, the remainder of the reasoning, based on the continuing accumulation of length-of-proceedings cases before the Court, is of no legal interest[2].

In July 1999, in the Italian length-of-proceedings cases cited in paragraph 148 of the judgment, the Court did, indeed, rule that the accumulation of identical breaches reflected a continuing situation that had still not been remedied and in respect of which litigants had no domestic remedy. That accumulation of breaches led it to hold that there was a practice incompatible with the Convention.

It is true that since then there have been more and more findings of violations based solely or principally on the excessive length of proceedings in a good many member States. But by the terms of the Convention, the Court has a duty to consider and try applications as submitted to it by litigants. To state, as the Court does in paragraph 149, that the time has now come, on account of the number of applications relating to length of proceedings, to examine the complaint under Article 13 taken separately smacks, in my view, more of expediency than of law.

4. Moreover, it is not certain that the level of judicial protection afforded at European level by the Convention will be strengthened merely because the Court will now be able to find a double violation – firstly on account of the excessive length of the proceedings and secondly on account of the lack of any effective remedy to complain about it. The finding of an additional violation of Article 13 is not in itself such as to overcome the endemic structural problems besetting the judicial systems of certain member States, any more than the finding that there is a practice incompatible with the Convention has been. It will not make it easier to reduce the Court's caseload, at least not in the medium term.

5. The aim of this finding of a violation of Article 13 is to confront the States with their responsibilities, in accordance with the subsidiarity principle, and to encourage them to establish in their domestic legal systems an effective remedy that will enable litigants to complain of excessive length of proceedings. Supposing such a remedy is instituted, I can hardly see how the structural problem of the unreasonable length of proceedings could be remedied by the obligation to first exhaust, as required by Article 35 of the Convention, an additional remedy designed to make it possible to complain about the length of proceedings.

There is nothing to warrant an assumption that such an action would be heard within a more reasonable time than the main proceedings. Nor does anything warrant an assumption that the main proceedings would be speeded up as a result of bringing such an action. Ultimately *only the litigant would suffer the consequences of this situation*.

6. I also think that after this departure from precedent other issues will necessarily arise on which the

Court will have to rule. According to the Court's settled case-law, for instance, the remedy required by Article 13 must be "'effective' in practice as well as in law" and likely to afford the person concerned "appropriate relief"[3]. However, a mere finding in the domestic courts of a breach of the obligation to rule within a reasonable time – made after such a remedy has been exhausted – and even, in an appropriate case, the award of compensation for non-pecuniary damage, will not make it possible to describe the remedy as effective *if the main proceedings are still pending*.

In that event, several years later, the applicant will be compelled to submit his application to the Court, relying on a violation of Article 6 § 1 and also, in this instance rightly, of Article 13. The effectiveness of human-rights protection will not thereby be strengthened, quite the contrary.

7. Although the Court reiterates[4] that the States "are afforded some discretion as to the manner in which they provide the relief required by Article 13", and although what is meant is "a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in [the particular context]"[5], the requirement of effectiveness means that such a remedy must be provided by an authority distinct – and independent – from the one that is ruling on the merits of the case since it is the latter that is responsible for the failure to rule within a reasonable time and therefore for the violation alleged by the applicant. Furthermore, the decisions of such an authority should be legally binding, since otherwise the requirement of effectiveness would not be satisfied[6].

8. Lastly, I should like to point out that in an appreciable number of cases the Court has found a violation of the right to a hearing within a reasonable time where the length of proceedings has been excessive in member States' supreme courts[7]. To whom should litigants turn either to have proceedings expedited or to secure compensation for loss resulting from a violation of Article 6 § 1 where the violation has been committed by the highest court in the land?

9. For all the above reasons, I am not able to concur with the majority inasmuch as they consider it necessary to hold that there has been a violation of Article 13 of the Convention. To my mind, it would have sufficed in the instant case to find a violation of Article 6 § 1.

1. Paragraph 151 of the judgment.

2. "… in the light of the continuing accumulation of applications before [the Court] …" (paragraph 148 of the judgment).

3. See, among other authorities, the Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI.

4. Paragraph 154 of the judgment.

5. Paragraph 151 of the judgment.

6. A petition to a Parliamentary Commissioner who has no power to grant redress is not an effective remedy (see the Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 43, § 115).

7. See, for example, the Ruiz-Mateos v. Spain judgment of 23 June 1993, Series A no. 262, p. 23, § 51; and, more recently, *Gast and Popp v. Germany*, no. 29357/95, ECHR 2000-II; *Savvidou v. Greece*, no. 38704/97, 1 August 2000, unreported; or *Guisset v. France*, no. 33933/96, ECHR 2000-IX.

KUDŁA v. POLAND JUDGMENT

KUDŁA v. POLAND JUDGMENT – PARTLY DISSENTING OPINION
OF JUDGE CASADEVALL