



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31439/96  
by Janusz KEPKA  
against Poland  
and

Application no. 35123/97  
by Janusz KEPKA  
against Poland

The European Court of Human Rights (Fourth Section), sitting on 11 July 2000 as a Chamber composed of

Mr G. Ress, *President*,  
Mr A. Pastor Ridruejo,  
Mr L. Caflisch,  
Mr J. Makarczyk,  
Mr V. Butkevych,  
Mr J. Hedigan,  
Mrs S. Botoucharova, *judges*,

and Mr V. Berger, *Section Registrar*,

Having regard to the above applications nos. 31439/96 and 35123/97 introduced with the European Commission of Human Rights on 16 February 1996 and 7 February 1997, and registered on 9 May 1996 and 28 February 1997 respectively,

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

Having deliberated, decides as follows:

**Commented [Note1]:** Judges names are to be followed by a **COMMA** and a **MANUAL LINE BREAK** (Shift+Enter). When inserting names via *AltS* please remove the substitute judge's name, if necessary, and the extra paragraph return(s). (There is to be no extra space between the judges' names and that of the Section Registrar.)

## THE FACTS

The applicant is a Polish national, born in 1935 and living in Warsaw, Poland

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

### A. The circumstances of the case

On 1 April 1988 the applicant, who at about the same time took his doctor's degree in physics, joined the National Fire Service (*Państwowa Straż Pożarna*) and, when he obtained a post of senior academic teacher at the National Fire Academy (*Szkoła Główna Służby Pożarniczej*), attained the rank of lieutenant. During the entire period of his service the applicant worked as a teacher. He gave lectures on physics and carried out scientific research. Part of that research concerned issues considered important for national defence. He also published articles and scientific dissertations.

In 1988 the applicant completed two training courses: the first in fire prevention, the second designed for fire officers.

On an unspecified later date he achieved the rank of captain.

On 31 May 1994 the applicant underwent a routine medical examination. The relevant report stated that he was permanently unfit to take part in fighting fires and emergency actions but fit to serve if he continued to work as a lecturer.

On 23 January 1995 the Superintendent of the National Fire Academy opened disciplinary proceedings against the applicant on charges of insubordination (in connection with his failure to comply with a superior's order), wilful disregard of instructions (in that he had allowed third persons to have access to research carried out in respect of the matter of crucial importance for national defence) and two other breaches of discipline.

On 10 March 1995 the Superintendent issued an order disciplinarily discharging the applicant from the fire service "with effect from 31 March 1995". The applicant appealed to the Commandant of the National Fire Service (*Komendant Główny Państwowej Straży Pożarnej*).

On 29 March 1995 the Commandant upheld the order. The applicant appealed to the Minister of the Interior (*Minister Spraw Wewnętrznych*) on 6 April 1995. He requested the Minister, *inter alia*, to "quash immediately the relevant orders" and to "promote him and award a special prize as reward for his achievements".

On 30 May 1995 the Minister upheld the decision to discharge the applicant from the fire service but amended the date on which it was to take effect, ordering that the material date be 31 May 1995.

Subsequently, on an unspecified date, the applicant appealed to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). He contested the decision of the Commandant of the National Fire Service of 29 March 1995 and the decision of the Minister of the Interior of 30 May 1995, alleging that they were contrary to the law.

The Supreme Administrative Court gave judgment on 13 September 1995. It dismissed the appeal for two principal reasons: firstly, because it had no jurisdiction to deal with disciplinary matters and, secondly, as it had found no legal flaw in the impugned decisions.

In the meantime, on an unspecified date, the applicant had sued the Superintendent of the National Fire Academy in the Warsaw District Court of Labour (*Sąd Rejonowy - Wydział Pracy*), seeking reinstatement to the fire service. The court refused to deal with the merits of the claim because a discharge from the fire service did not fall within the labour courts' jurisdiction, such matters being resolved exclusively in administrative proceedings.

## **B. Relevant domestic law**

The organisation of the National Fire Service, terms and conditions of service therein and detailed duties of firemen are laid down in the Law of 24 August 1991 on the National Fire Service (*Ustawa o Państwowej Straży Pożarnej*) (as amended), hereafter referred to as "the 1991 Act".

The National Fire Service in Poland is part of the national public service. From the organisational point of view, it is, like the police, incorporated into the Ministry of the Interior. The Commandant of the National Fire Service is a public authority called a "central organ of governmental administration" (*centralny organ administracji rządowej*) and, like the Commandant of the Police, is subordinate to the Minister of the Interior (section 9 §1 of the 1991 Act). The Minister of the Interior not only supervises the National Fire Service but also has the power to issue ordinances or other regulations setting out the detailed organisation of fire-fighting brigades, units and their equipment (section 8 § 4 of the 1991 Act).

Within the general structure of the State, the National Fire Service, like other emergency services, belongs to the forces for maintenance of public safety.

Section 1 of the 1991 Act lays down the general tasks and duties of the National Fire Service. This provision reads:

- "1. There shall be established the National Fire Service – a professional, uniformed and specially equipped formation, which shall deal with fire-fighting, disasters and other local emergencies.
2. The National Fire Service shall carry out the following principal tasks:
  - 1) identifying fire hazards and other local emergencies;
  - 2) organising and carrying out rescue actions during fires, disasters or operations to combat local emergencies;
  - 3) carrying out supporting specialised rescue actions during disasters or operations by other emergency services to combat local emergencies;
  - 4) training staff for the National Fire Service and other organs of fire protection and the national system for the protection of the nation;

- 5) supervising compliance with fire-safety regulations;
  - 6) carrying out research into fire prevention and protection of the nation.
3. Service in the National Fire Service shall be performed by fire service officials, hereafter named “firemen”.

Section 2 § 1 states:

“The National Fire Service shall organise the national system of fighting fires and combating emergencies, aimed at protecting life, health, property and the environment, in particular through:

- 1) fighting fires and other disasters;
- 2) technical rescue operations;
- 3) chemical rescue operations;
- 4) ecological rescue operations;
- 5) medical rescue operations.”

Section 8 § 1 sets out the following structure of the National Fire Service:

“There shall be the following organisational units of the National Fire Service:

- 1) the Chief Command;
- 2) the Regional Command;
- 3) the County/Town Command;
- 4) the National Fire Academy and other schools or training centres;
- 5) the research and development units;
- 6) the Central Museum of the Fire Service.”

Section 17 § 1 of the Act, referring to the organisation of the National Fire Academy, stipulates:

“The organisation and scope of the activities of the National Fire Academy, as well as the rules governing the appointment or dismissal of its Superintendent and his deputies, shall be regulated by the provisions concerning higher military academies.”

## COMPLAINT

The applicant complains under Article 6 § 1 of the Convention that in the disciplinary proceedings in which he was discharged from the fire service and, at the same time, dismissed from his post of an academic teacher at the National Fire Academy in Warsaw he did not have a “fair hearing” and that his case was never heard by a court.

The applicant further requests the Court to order the joinder of his applications registered under files nos. 31439/96 and 35123/97 since they concern complaints which are in substance the same.

## THE LAW

1. The Court finds it necessary to join the applications under Rule 43 § 1 of the Rules of Court.
2. The applicant, invoking Article 6 § 1 of the Convention, alleges that the disciplinary proceedings against him were unfair and that his case was never heard by a “court”, contrary to that provision.

Article 6 § 1 states, insofar as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

The Court begins by recalling that it has recently ruled that, in order to determine whether Article 6 § 1 applies to disputes raised by public servants, a functional criterion based on the nature of the official’s duties and responsibilities should be adopted (see the *Pellegrin v. France* judgment of 8 December 1999, [GC] §§ 64-67, unreported and the *Frydlender v. France* judgment of 27 June 2000 [GC], § 32, unreported).

The Court decided to adopt a restrictive interpretation, in accordance with the object and purpose of the Convention, because it intended to limit cases in which public servants could be denied the practical and effective protection afforded to them, as to any other person, by the Convention and in particular by Article 6 thereof (see the *Frydlender v. France* judgment, *ibid.*)

However, the Court has also accepted that in each country’s public-service sector certain posts involve responsibilities in the general interest or participation in the exercise of powers conferred by public law and that, as the holders of such posts wield a portion of the State’s sovereign power, the State has a legitimate interest in requiring of these servants a special bond of trust and loyalty (see the *Pellegrin v. France* judgment, *ibid.*)

Accordingly, the disputes excluded from the scope of Article 6 § 1 of the Convention are those which are raised by public servants who wield a portion of the State’s sovereign power and whose duties typify the specific activities of the public service in so far as the latter is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities, the armed forces and police being a manifest example of such activities (see the *Pellegrin v. France* judgment, *ibid.*).

In the present case, the Court notes that the applicant was a member of the National Fire Service, a body which in Poland belongs to the forces for the maintenance of public safety. It is true that the applicant was employed in the National Fire Academy as an academic teacher and that his principal duties were to lecture and carry out scientific research. Also, in 1994, in the course of a routine medical examination, he was found unfit to take part in fire fighting or emergency actions but able to continue his work as a lecturer.

However, during the entire period of his employment, the applicant, even though at some point of his career he had become unfit to fight fires, held the rank of fire service officer and, as it emerges from his submissions, developed his career in the fire service. In particular, he was promoted from the rank of lieutenant to the rank of captain. He carried out

scientific research related to matters which the Polish authorities considered crucially important for national defence.

In the Court's view, these facts of the case show that the tasks assigned to the applicant cannot be regarded as involving merely a "relatively low" or "low" level of "responsibilities". On the contrary, his tasks not only gave him considerable responsibilities in the sphere of national defence - a sphere in which the State exercises sovereign power, but also entailed – at least indirect – participation in the performance of duties designed to safeguard the general interests of the State (see, *a contrario*, the *Frydlender v. France* judgment, *ibid.* § 39). Furthermore, given the character of the research in which he was involved, research inevitably resulting in his having access to information considered confidential or secret, the Polish State could legitimately require of him an especially strong bond of trust and loyalty.

The fact that during the entire period of his service the applicant worked as a lecturer, cannot, for the purposes of Article 6 § 1, be taken in isolation from other duties and responsibilities performed by him during his work in the fire service. This fact does not in itself suffice to bring his case within the ambit of Article 6. What is more, the applicant pursued his academic career not at a civilian university or academy, but at a quasi-military academy, to which activities the rules concerning higher military academies applied. This entailed obtaining an officer's rank and required him to enter the service and, consequently, to obey orders from his superiors or to give orders to his subordinates, to comply with strict rules of discipline, and to accept the hierarchy and other conditions within the service environment.

Accordingly, Article 6 § 1 is not applicable in the present case.

For these reasons, the Court, unanimously,

**DECIDES TO JOIN** the applications;

**DECLARES THE APPLICATIONS INADMISSIBLE.**

Vincent Berger  
Registrar

Georg Ress  
President