AS TO THE ADMISSIBILITY OF

Application No. 33889/96
by Kazimierz BIEŃKOWSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

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

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 February 1996 by Kazimierz BIEŃKOWSKI against Poland and registered on 18 November 1996 under file No. 33889/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1922, is a retired officer of the former Civic Militia residing in Warsaw, Poland.

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

Particular circumstances of the case:

On 23 April 1958 the Warsaw Regional Board of the Union of Fighters for Liberty and Democracy (Zarząd Wojewódzki Związku Bojowników o Wolność i Demokrację) issued a decision granting the applicant the so-called "status of veteran" (uprawnienia kombatanckie) on the grounds of the following facts:

"... that from February 1943 to January 1945 he was a member of a resistance movement and that, from 16 February 1945 to 31 December 1947, he took part in the armed struggle to consolidate the people's power ..."

On an unspecified date in June 1968 the applicant retired; from that time he received a retirement pension and a so-called "veteran benefit" (dodatek kombatancki), i.e. an allowance to which only retired veterans were entitled.

On 15 November 1993 the Director of the Office for Veterans and Persecuted Persons issued a decision divesting the applicant of the "status of veteran" under Section 25 para. 2 (1) (a) read together with Section 21 para. 2 (4) (a) of the Law of 24 January 1991 on Veterans and Other Victims of War and Post-War Repression (Ustawa o kombatantach oraz niektórych osobach będących ofiarami represji wojennych i okresu powojennego). The reasons for this decision read:

"... It transpires from a declaration issued by the Warsaw District Civic Militia Headquarters on 13 September 1976 that you served in organs of the Internal Public Security Service from 16 February 1945 to 15 June 1968 and that, [beforehand,] from 16 February 1945 to 31 December 1947, you had taken part in armed fighting with [the so-called] reactionary underground resistance forces. Since under ... Section 25 para. 2 (4) (a) of the Law of 24 January 1991 ... anyone who has served in organs of the internal public security shall be divested of veteran status, the present decision is justified."

On 6 December 1993 the applicant appealed against the above decision to the Administrative Supreme Court (Naczelny Sąd Administracyjny), submitting that the reasons given therefor were manifestly illogical. It was true that he had served in the organs of the Internal Public Security Service; however, he had never personally repressed or persecuted Poles, except for those who had collaborated with the Nazis during the Second World War. Moreover, he had acquired the status of veteran due to his fight for the independence of Poland as, from 1943 to 1945, he had been a member of the anti-Nazi resistance forces, i.e. the People's Army (Armia Ludowa).

The Supreme Administrative Court scheduled a hearing for 27 October 1995. During the hearing the applicant submitted a pleading, stressing that the contested decision had amounted to "political revenge", as the mere fact that he had served in the

Internal Public Security Service could not, in itself, be sufficient proof that he had ever committed any condemnable, illegal or immoral act.

On the same day the Supreme Administrative Court gave judgment dismissing the applicant's appeal. It held that, under Sections 21 and 25 of the Law of 24 January 1991 on Veterans and Other Victims of War and Post-War Repression, no one who had previously served in the Internal Public Security Service could be granted or retain the status of veteran, whatever were, or had been, his merits. Moreover, by virtue of the above-mentioned provisions of the Law, the legislator had affirmed that the mere fact of serving in such public organs as the Internal Public Security Service was morally condemnable and had introduced rules obliging the authorities to re-assess and verify decisions granting veteran status to persons who had served in those organs. In the present case there was no dispute as to the fact that the applicant had served in the Internal Public Security Service; this fact was, in itself, sufficient under the terms of the statute to justify the decision to divest him of his previously-acquired status. The impugned decision had therefore been taken in conformity with the relevant provisions of the substantive law.

Relevant domestic law:

The Law of 24 January 1991 on Veterans and Other Victims of War and Post-War Repression repealed the Law of 26 May 1982 on the Special Status of Veterans.

The 1991 Law was enacted in order to regulate the system of granting special privileges attached to the so-called "status of veteran" and, partly, intended as a condemnation of the political role played by the former Communist organs of public security in establishing the Communist regime, implementing a Stalinist policy and repressing political opposition to the system. For this reason, considering that persons serving in such State organs, whose task was, inter alia, to combat and eliminate all forms of democratic opposition, did not merit special privileges attached to the "status of veteran", the legislator decided that these persons should be unconditionally deprived of such status.

This statute also established a new public organ, the Office for Veterans and Persecuted Persons. Under the Law, the Office is competent to grant the "status of veteran" and obliged to verify whether persons who have previously acquired such a status meet the new statutory criteria.

Section 21 para. 2 (4) (a) of the Law, insofar as relevant, provides:

"2. No one shall acquire veteran status, if :

(4) (a) he has served [or has been employed] in organs of the Internal Public Security Service ..."

Section 25 para. 2 of the Law, insofar as relevant, provides:

"2. Anyone who has acquired the status of veteran on the basis referred to in Section 21 para. 2 ... (4) shall be divested of such previously acquired status."

The Internal Public Security Service (aparat bezpieczeństwa publicznego) is defined as being the State organs, partly comprising special armed forces and political police, patterned on the NKVD and the KGB, established on 21 July 1944 with a view to combating, suppressing and eliminating groups of political opposition, including the post-war underground resistance against Communism. These organs were also competent to conduct criminal investigations under the rules of criminal procedure. They were, depending on political circumstances, called variously: the "Department of Public Security" (Resort Bezpieczeństwa Publicznego) (July 1944 - January 1945); the "Ministry of Public Security" (Ministerstwo Bezpieczeństwa Publicznego) (January 1945 - December 1954); the "Committee for Public Security" (Komitet do Spraw Bezpieczeństwa Publicznego) (1954 - 1956); and the "Security Service" (Służba Bezpieczeństwa) i.e. a special department of the Ministry of the Interior (1956 - 1990).

Under the provisions of both the repealed Law of 26 May 1982 and the new Law of 24 January 1991, veterans were (and are) entitled to privileged status in comparison to other employees or retired persons; this includes, e.g., a special, favourable method of calculating periods of employment; a lower age of retirement; and various financial benefits paid in addition to their normal pension calculated in accordance with the rules set out in the general social insurance system.

At the time when the applicant was divested of his "status of veteran", a retired veteran was, inter alia, entitled to a so-called "veteran benefit" equal to 10% of the average monthly salary in the public sector; a fare discount of 50% on travel by municipal transport, rail and public long-distance buses; a special allowance covering 50% of such household expenses as electricity, gas and heating and a discount of 50% on motor-vehicle insurance.

The loss of the "status of veteran" does not, however, entail any legal or practical consequences in respect of the right to receive a normal pension since, under Section 26 of the Law, a person divested of such a status is still entitled to his pension calculated under the rules applicable within the general social insurance scheme.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention about the outcome of the proceedings concerned, submitting that they were unfair, in particular because the Polish authorities incorrectly established and assessed the facts relevant for the determination of his case.

2. Under Article 14 of the Convention he submits that the Polish authorities, by depriving him of his legally-acquired status of veteran and entitlements attaching thereto,

discriminated against him since members of other armed forces established during or after the Second World War retained their veteran rights.

THE LAW

1. The applicant complains under Article 6 para. 1 of the Convention about the outcome of the proceedings concerned, submitting that they were unfair, in particular because the Polish authorities incorrectly established and assessed the facts relevant for the determination of his case.

The Commission, noting that the proceedings complained of did not involve the determination of any criminal charge against the applicant, has firstly examined whether Article 6 of the Convention applies to the proceedings complained of under its "civil head".

This part of Article 6 para. 1 of the Convention provides:

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law ... ".

The Commission further recalls that the applicability of this limb of Article 6 para. 1 of the Convention requires the existence of a "dispute" over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. This dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and to the manner of its exercise. Furthermore, the outcome of the proceedings must be directly decisive for the right in question (see Eur. Court HR, Rolf Gustafson v. Sweden judgment of 1 July 1997, Reports of Judgments and Decisions 1997-IV no. 41, p. 1160, para. 38).

In respect of the present case the Commission observes that the proceedings complained of concerned the question of whether or not the applicant should retain his previously-acquired "status of veteran" and that the final decision given in those proceedings, by virtue of which he was eventually divested of this status, was decisive for his pecuniary rights, in particular, the entitlement to the "veteran benefit", i.e. a specific sum of money. The Commission therefore considers that the proceedings involved a "dispute" over the applicant's civil rights and that, consequently, Article 6 para. 1 of the Convention applies in respect of them.

However, the Commission notes that the applicant does not allege any particular failure to respect his right to a fair hearing on the part of the domestic authorities but that his complaints essentially amount to an objection to the decisions given by these authorities in his case and the errors of fact allegedly committed by them. In this regard the Commission recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to examine alleged errors of fact and law committed by national courts, except where it considers that such errors might have

involved a possible violation of the rights and freedoms set forth in the Convention (No. 29598/96, Dec. 10.7.97, D.R. 90-A, pp. 109 and 117).

It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant also complains under Article 14 of the Convention that the Polish authorities, by depriving him of his legally-acquired status of veteran and the entitlements attaching thereto, discriminated against him since members of other armed forces established during or after the Second World War retained their veteran rights.

The Commission, noting that this complaint is not limited to the question of whether Polish law operated in a discriminatory manner but also relates to the loss of pecuniary benefits attached to the "status of veteran", has examined it under Article 1 of Protocol No. 1 to the Convention read together with Article 14 of the Convention.

Article 1 of Protocol No. 1 to the Convention, insofar as relevant, provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ..."

Article 14 of the Convention provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that the right to a pension based on employment may, in certain circumstances, be assimilated to a property right, either because of the contributions paid by the employee or because of an undertaking by the employer in the employment contract to finance the pension (No. 12264/86, Dec. 13.7.88, D.R. 57, p. 131). The rights stemming from payment of such contributions to the social insurance system are pecuniary rights for the purposes of Article 1 of Protocol No. 1 to the Convention (see, mutatis mutandis, Gaygusuz v. Austria judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV no. 14, p. 1141, paras. 39-41). Accordingly, the right to derive benefits from the social insurance system can be asserted under Article 1 of Protocol No. 1 to the Convention, even though this provision cannot be interpreted as giving a right to a pension of a particular amount (No. 10671/83, Dec. 4.3.85, D.R. 42, p. 229).

The Commission further reiterates that, for the purposes of Article 14 of the Convention, a difference in treatment is discriminatory if it has no objective and reasonable justification, which means that it does not pursue a "legitimate aim" or there is

no "reasonable proportionality between the means employed and the aim sought to be realised". Moreover, the States concerned enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see, the Gaygusuz v. Austria judgment, loc. cit.).

In the present case the Commission observes that, by virtue of the judgment of the Supreme Administrative Court of 27 October 1995, the applicant lost the special, privileged status of veteran, which had entitled him to an extra allowance paid in addition to his normal pension (i.e. a so-called "veteran benefit") and some other benefits enabling him to take advantage of certain discounts to which other retired persons were not entitled, or covering some of his household expenses. He did, however, retain all his rights attached to his ordinary pension under the general social insurance system. Consequently, the applicant's pecuniary rights stemming from the contributions paid into his pension scheme (regardless of whether they had been paid by him or by his former employer) remained the same.

Furthermore, the Commission observes that the decision divesting the applicant of the "status of veteran"" was based on the Law of 24 January 1991 on Veterans and Other Victims of War and Post-War Repression. This Law excluded all persons who had previously served in the former Communist organs of public security from the privileged group of "veterans" in view of the political role played by such organs of the former Communist regime in combating and eliminating political opposition to the system.

In the Commission's view, such considerations of public policy cannot be seen as affecting the property rights of the persons concerned, i.e. their right to derive benefits from the social insurance system, in a manner contrary to Article 1 of Protocol No. 1 to the Convention, especially as they did not result in the essence of such persons' pension rights being impaired.

Nor does the Commission consider that the statutory measures applied by the Polish State in respect of persons who had served in the former organs of public security, even though entailing a reduction in their extra social security benefits, amounted to discrimination contrary to Article 14 of the Convention. In this regard the Commission observes that the measures complained of were not based on the idea that any members of the Polish armed forces established during or after the Second World War should be treated differently, but aimed at the objective verification of whether certain persons, in particular those formerly employed in the organs commonly regarded as the machinery of repression, satisfy the present statutory conditions for the award of a special, honourable status. The means applied by the Polish authorities had, therefore, an objective and reasonable justification and realised a legitimate aim, which was to regulate the operation of the existing system of granting exceptional privileges.

It follows that the remainder of the application is inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER Secretary to the Second Chamber	J.-C. GEUS President of the Second Chamber