AS TO THE ADMISSIBILITY OF

Application No. 24086/94
by Waclaw BOROZYNSKI
against Poland

The European Commission of Human Rights sitting in private on 2 December 1996, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

Mr. M. de SALVIA, Deputy Secretary to the Commission

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

Having regard to the application introduced on 19 November 1993 by Waclaw BOROZYNSKI against Poland and registered on 3 May 1994 under file No. 24086/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 16 October 1995 and the observations in reply submitted by the applicant on 20 December 1995;

Having deliberated;

Decides as follows:

THE FACTS

A. Particular circumstances of the case

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

The applicant is a Polish citizen born in 1924. He resides in Ostróda, Poland.

I.

On 24 April 1992 the Ilawa District Court (S*d Rejonowy) convicted the applicant of aggravated theft and using false documents and sentenced him to three years and eight months' imprisonment. The Court, which consisted of the professional judge J.C. and two lay judges, considered evidence given inter alia by a policeman who had seen the applicant at the scene of the crime at the material time and had subsequently conducted the preliminary investigations.

Upon the applicant's appeal, on 4 September 1992 the Olsztyn Regional Court (S*d Wojewódzki) upheld the judgment of the District Court of 24 April 1992.

On 20 May 1993 the Minister of Justice refused leave for an extraordinary appeal.

II.

On 6 July 1992 the applicant requested the Olsztyn Regional Prosecutor to institute criminal proceedings for giving false evidence against the policeman L.N. who had testified against him at the above trial.

On 3 August 1992 the Ilawa District Prosecutor refused to institute criminal proceedings against the policeman. It found no indication that he had committed an offence and noted that his evidence coincided with the evidence put forward by the co-accused. Eventually the Prosecutor instituted criminal proceedings against the applicant for false denunciation. During the investigation the applicant refused to testify and apparently later waived his charges against L.N.

The applicant challenged the trial judge J.C. presiding over the Ilawa District Court in the proceedings relating to false denunciation. The applicant contended that it was the same judge who had presided over the Court which had convicted him in the previous proceedings, while the facts of the two cases were closely interrelated. The President of the Court dismissed this challenge as having no statutory basis.

At the hearing before the Ilawa District Court on 10 March 1993 the applicant confirmed that he wished to withdraw his charges against L.N. The Court, consisting of judge J.C. and two lay judges, nevertheless convicted the applicant of false denunciation of the policeman who had testified against him in the previous criminal proceedings and sentenced him to one year and six months' imprisonment.

The applicant filed an appeal against this judgment with the Olsztyn Regional Court, complaining inter alia that the judge who had considered the first case should have stepped down as he was biased against the applicant. He submitted that the judge could not have been impartial as an acquittal in the proceedings relating to false denunciation would have raised doubts as to the well-foundedness of the conviction for theft. He further submitted that L.N.'s testimony in the first set of proceedings had been false.

On 6 May 1993 the Olsztyn Regional Court upheld the judgment of 10 March 1993. The Court considered that under Rule 31 of the Code of Criminal Procedure the challenge of the judge could not be granted (see below, Relevant domestic law). The Court considered that, as it

transpired from the District Court's judgment that the applicant had been particularly malevolent in falsely denouncing the policeman, the penalty was rightly determined accordingly to defend the previous conviction (" (...) wywody S*du Rejonowego wskazuj* na zlosliwosc oskarzenia swiadka (...). Znalazlo to wyraz w wymiarze kary uwzgl*dniaj*cej ochron* (...) zapadlego prawomocnego wyroku (...)".

On 3 July 1993 the Olsztyn Regional Court prepared written grounds for its judgment of 6 May 1993.

B. Relevant domestic law

The relevant requirement for a judge to step down is set out in Article 31 of the Polish Code of Criminal Procedure which provides:

<Translation>:

Article 31:

"A judge steps down if between him and one of the parties there exists a personal relationship of a kind that may cast doubt on his impartiality."

<Original>:

Artykul 31:

"S*dzia ulega wyl*czeniu, jezeli pomi*dzy nim a jedn* ze stron zachodzi stosunek osobisty tego rodzaju, ze móglby wywolywac w*tpliwosci co do bezstronnosci tego s*dziego."

COMPLAINTS

The applicant complains that in the first set of proceedings the Ilawa District Court wrongly refused to take certain evidence requested by him and wrongly assessed the evidence.

The applicant further complains that the second set of proceedings, leading to conviction for false denunciation, was unfair, as the same judge presided in both cases against him, while their subjects were closely related. He submits that the judge was not in a position to be impartial as acquittal of the applicant in the second set of proceedings would have called into question the well-foundedness of the first judgment. The applicant further alleges personal bias on the part of the trial judge.

He also complains about the outcome of the criminal proceedings.

The applicant invokes Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 19 November 1993 and registered on 3 May 1994.

On 27 February 1995 the Commission decided to communicate the application to the respondent Government and to invite them to submit written observations on the admissibility and merits.

The Government's written observations were submitted on 16 October 1995, after an extension of the time-limit fixed for that purpose. The applicant replied on 20 December 1995.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention that in the first set of criminal proceedings against him the court refused to take certain evidence requested by him and wrongly assessed the evidence. The applicant also complains about the outcome of these proceedings.

The Commission recalls that Poland recognised the competence of the Commission to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by Poland of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". In the present case the proceedings concerned ended by a final judgment of 4 September 1992.

It follows that this part of the application is outside the competence ratione temporis of the Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant further complains under Article 6 (Art. 6) of the Convention that the second set of proceedings, leading to his conviction for false denunciation, was unfair, as the same judge presided in both cases against him, while their subjects were closely related.

a) The Government first submit that the application in its part relating to the proceedings before the Ilawa District Court is incompatible ratione temporis with the Convention as these proceedings ended on 10 March 1993, i.e. prior to 30 April 1993. On the other hand, the Commission is competent to examine the appeal proceedings before the Olsztyn Regional Court, which came to an end on 6 May 1993. However, it is to be noted that the applicant does not put into question the fairness of the proceedings before the latter Court. The Government further submit that events prior to 1 May 1993 should be taken into account merely as a background to the issues before the Commission (Eur. Court HR, Hokkanen v. Finland judgment, Series A vol. 299, p. 19, para. 53).

The applicant does not address this issue.

The Commission recalls that when the Commission's competence ratione temporis begins in the course of proceedings before a second instance court, it may examine such proceedings, but not those at first instance (No. 8261/78, Dec. 11.10.79, D.R. 18, p. 150).

The Commission further recalls that Poland has accepted its jurisdiction in respect of "any act, decision or event occurring after 30 April 1993".

The Commission notes that in the present case the second set of the criminal proceedings came to an end before the Ilawa District Court on 10 March 1993. The applicant filed an appeal in which he complained inter alia that the judge who had considered the first case should have stepped down as he was biased against the applicant. He submitted that the judge could not have been impartial as an acquittal in the proceedings relating to false denunciation would have raised doubts as to the well-foundedness of the first conviction for theft. This appeal was examined by the Olsztyn Regional Court on 6 May 1993. The Court considered that under Article 31 of the Code of Criminal Procedure the challenge of the judge could not have been allowed by the first instance court as the relevant legal requirements of this provision had not been complied with.

The Commission notes that the applicant does not raise any complaints as regards the fairness of the proceedings before the Olsztyn Regional Court. He complains only that this Court did not

rectify the alleged shortcomings of the proceedings before the District Court. The Commission observes that the proceedings before the Ilawa District Court ended prior to 1 May 1993. In the light of the limitations contained in the Polish declaration as to the Commission's competence ratione temporis, the Commission considers that this part of the application is outside its competence ratione temporis and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA	S. TRECHSEL
Deputy Secretary	President
to the Commission	of the Commission