AS TO THE ADMISSIBILITY OF

Application No. 28250/95
by Stanislaw DOBRANOWSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1997, the following members being present:

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

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 24 April 1995 by Stanislaw DOBRANOWSKI against Poland and registered on 18 August 1995 under file No. 28250/95;

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 1944, is a retired teacher and resides in Tulowice in Poland.

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

Particular circumstances of the case

On 17 September 1991 the Deputy Chief Justice of the Opole Provincial Court (S*d Wojewódzki) ordered that the applicant's name be struck off the list of the court's experts in view of the fact that the latter no longer had the qualities and credibility required. The decision was based, inter alia, on a declaration issued by the applicant's superior which stated that the applicant had been prohibited from practising the profession of teacher. In fact, at the material time, the applicant was suspended from his teacher's duties and disciplinary proceedings were pending against him. Eventually, on 31 March 1992, the applicant was dismissed from his post as a teacher as a disciplinary punishment.

On 19 July 1994 the applicant lodged with the Supreme Court (S*d Najwyzszy) an action in tort against the Minister of Justice and the

Opole Provincial Court. He requested compensation of 800 million PLZ for loss arising from the decision of the Deputy Chief Justice of the Opole Provincial Court which was, in his opinion, unlawful.

On 31 August 1994 the Supreme Court declared that it had no jurisdiction and ordered the case to be transferred to the Opole Provincial Court, which had territorial jurisdiction as well as jurisdiction with respect to the subject-matter.

On 3 October 1994 the Opole Provincial Court, sitting in camera, rejected the applicant's claim on the ground that his application to a civil court was premature as, according to Polish law, he should first have obtained the annulment of the decision in question, as well as a subsequent decision on the amount of compensation, both of which are matters of administrative, not civil, law. It was held that these preliminary steps constituted conditions sine qua non of access to a civil court in the applicant's case.

On 10 October 1994 the applicant appealed to the Wroclaw Provincial Court (S*d Wojewódzki), arguing that the court of first instance had wrongly interpreted the law. He also submitted that the decision in question was based on the false statement of his superior who had intentionally impaired his reputation and dignity.

On 23 November 1994 the Wroclaw Court of Appeal (S*d Apelacyjny), sitting in camera, dismissed the applicant's appeal and entirely upheld the grounds given by the court of first instance. This decision was served on the applicant on 2 December 1994.

On 9 December 1994 the applicant petitioned the Chief Justice of the Supreme Court to lodge an extraordinary appeal on his behalf. This was refused on 30 December 1994.

Relevant domestic law and practice:

Under Polish law a party claiming compensation for loss arising from an unlawful decision issued by a domestic organ must first establish the "unlawfulness" of the decision in question according to the rules set out in the Code of Administrative Procedure.

Section 156 para. 1 of the Code of Administrative Procedure, insofar as relevant, provides:

> "1. An organ of public administration shall declare a decision to be null and void if:
>
> (...)
>
> (2) the decision was given without a legal basis or contrary to the law."

Compensation arising from an unlawful decision of a public organ must first be resolved in administrative proceedings. Where a given party is not satisfied with the compensation granted in such proceedings, a claim may be lodged with the court competent to deal with civil cases.

Section 160 of the Code of Administrative Procedure, insofar as relevant, provides:

> "1. A party injured as a result of the issue of a decision subsequently declared null and void, under Section 156 para. 1 of the Code, has a claim for compensation for the amount of the loss sustained by him.
>
> (...)

4. The organ of public administration which annulled the decision in question under Section 156 para. 1 shall decide on the amount of the compensation.

5. If a party is not satisfied with the compensation granted by an organ of public administration he may lodge a claim with a competent court within thirty days from the date on which the decision on compensation was served on him."

COMPLAINTS

The applicant complains under Article 6 para. 1 and Articles 7, 8, 13 and 14 of the Convention that he was denied access to a court for the determination of his civil rights - in particular the right to restore his reputation and dignity - and that he experienced discrimination in that judicial authorities enjoy a too wide legal protection under Polish law.

THE LAW

1. The applicant complains about lack of access to a court. He relies on Article 6 para. 1 (Art. 6-1) of the Convention, which states, insofar as relevant:

"In the determination of his civil rights and obligations (...) everyone is entitled to a (...) hearing (...) by (a) (...) tribunal established by law."

According to the Convention organs' case-law, Article 6 para. 1 (Art. 6-1) of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, the right of access is not absolute but may be subject to limitations since the right by its very nature calls for regulation by the State. Nonetheless the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see Eur. Court HR, Philis v. Greece judgment of 27 August 1991, Series A, no. 209, p. 20-21, para. 59).

In the present case, the Commission notes that the applicant's access to a civil court was only temporarily and conditionally restricted. According to the domestic law, the applicant could not claim compensation for loss arising from the order given by the Deputy Chief Justice of the Opole Provincial Court until the decision in question had been annulled in administrative proceedings and until there had been a further favourable decision of a competent organ of public administration concerning the amount of compensation. In other words, the domestic law lays down specific conditions with regard to persons who claim to be injured by an unlawful decision given by a public body.

In the Commission's opinion, the criteria established by Polish law for access to the court in such cases do not appear unreasonable. It cannot therefore be said that the limitations applied in the applicant's case impaired the very essence of his right of access to a court within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also invokes Article 13 (Art. 13) of the Convention in support of his complaints. This provision states:

"Everyone whose rights and freedoms as set forth in this 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."

The Commission, having regard to its considerations concerning the applicant's complaints under Article 6 para. 1 (Art. 6-1) of the Convention, takes the view that it does not have to examine the case under Article 13 (Art. 13) as its requirements are less strict than, and are here absorbed by, those of Article 6 (Art. 6) (see, inter alia, Eur. Court HR, Philis v. Greece judgment of 27 August 1991, Series A, no. 209, p. 23, para. 67).

It follows that this part of application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Insofar as the applicant also invokes Articles 7, 8 and 14 (Art. 7, 8, 14) of the Convention in support of his complaints the Commission finds no separate issue.

It follows that the remainder of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber