AS TO THE ADMISSIBILITY OF

Application No. 26229/95
by Józef GAW*DA
against Poland

The European Commission of Human Rights sitting in private on 15 January 1996, the following members being present:

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

Mr. H.C. KRÜGER, 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 30 January 1994 by Józef GAW*DA against Poland and registered on 17 January 1995 under file No. 26229/95;

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

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

Particular circumstances of the case

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

The applicant, a Polish citizen born in 1936, is an electrician, residing in K*ty.

I.

On 9 September 1993 the Bielsko-Biala Regional Court (S*d Wojewódzki) dismissed the applicant's request for registration of a title of a periodical "The Social and Political Monthly - A European Moral Tribunal" ("Miesi*cznik spoleczno-polityczny, europejski s*d moralny") to be published in K*ty. The Court considered that in accordance with the Press Act and the Order of the Minister of Justice on Registration of Periodicals, the name of a periodical should be relevant to its contents. The name as proposed by the applicant would suggest that an European institution had been established in K*ty, which was untrue and would be misleading to prospective buyers. Moreover, the title proposed by the applicant would be disproportionate to its actual importance and readership as it was hardly conceivable that a periodical of a European dimension could be published in K*ty.

On 17 December 1993 the Katowice Court of Appeal (S*d Apelacyjny) upheld this decision. On 6 May 1994 the Minister of Justice refused to grant leave for an extraordinary appeal as the impugned decisions were in accordance with the law.

II.

The applicant applied to the Bielsko-Biala Regional Court for registration of a press title of a monthly "Great Encyclopedia of Herbal Healing" ("Wielka Encyklopedia Recept Ziolowych").

On 7 July 1994 the Bielsko-Biala Regional Court dismissed this request, considering that the relevant regulations required that a title of a periodical should be relevant to its actual contents so as not to be misleading for prospective buyers. As the applicant lacked any relevant qualifications and only intended to buy recipes from specialists and to publish traditional herbal recipes, the title of the planned periodical would obviously not reflect its actual contents.

III.

On 17 February 1994 the Bielsko-Biala Regional Court dismissed the applicant's request for registration of a press title of a monthly "Germany - a Thousand year-old Enemy of Poland" ("Niemcy - Polski Wróg Tysi*clecia"). The Court noted that at a hearing on 17 February 1994 the applicant, when requested to change the proposed title so as to remove its negative character, refused to do so. The Court considered that the registration of the periodical with the proposed title would be harmful to Polish-German reconciliation and detrimental to good cross-border relations.

The applicant appealed against this decision, submitting that the Court's decision was incomprehensible and amounted to straightforward censorship.

On 12 April 1994 the Katowice Court of Appeal upheld this decision. The name, as proposed by the applicant, suggested that the proposed periodical would concentrate unduly on negative aspects of Polish-German relations and thus give an unbalanced picture of facts. The Court considered that the lower Court was justified in finding that the name would be detrimental to Polish-German reconciliation and to good relations between Poland and Germany and that the registration of a periodical with this title would infringe Article 5 of the Order of the Minister of Justice on Registration of Periodicals.

IV.

On 8 December 1994 the Bielsko-Biala Regional Court dismissed the applicant's request for registration of a periodical "Germany - a Thousand year-old Ally of Poland" ("Niemcy-Polski Przyjaciel Tysi*clecia").

On 24 January 1994 this Court dismissed the applicant's request for the grounds of the decision to be recorded in writing, the request having been submitted out of time.

Relevant domestic law

Article 20 of the Press Act requires a registration of the press title by the Regional Court as a prerequisite for publication of a periodical. A request for registration should contain the proposed title, address of the editor, name and other personal data concerning the editor-in-chief, name and address of the publishing house and how often the periodical shall be published. The decision on registration is to be taken within thirty days of the date on which the request has been filed with the court. The court shall refuse registration if the request does not contain the required data or if the proposed title would prejudice a right to protection of the title of any existing periodical.

Article 23 (a) of the Press Act authorises the Minister of Justice to issue an order to specify the manner in which the press register should be run.

Article 5 of the Order of the Minister of Justice on Registration of Periodicals provides that the Court shall refuse registration if the registration is not in conformity with the regulations in force or if the details contained in the request for registration do not correspond with the factual situation of the periodical ("S*d nie moze zarz*dzic wpisu do rejestru, jezeli wpis ten bylby niezgodny z obowi*zuj*cymi przepisami lub faktycznym stanem rzeczy").

Article 45 of the Press Act provides that a person who publishes a periodical without the required registration, is liable to a fine.

COMPLAINTS

The applicant complains that the Election Act of 1993 requires that any political party must obtain at least 5 per cent of the votes in order for its candidates to be elected to the Parliament, whereas the political representations of the national minorities are exempted from this requirement. He relies on Articles 5, 8, 9, 10, 14 and 17 of the Convention.

The applicant further complains under Article 10 of the Convention that the Court refused to register the titles of all the periodicals which he wanted to publish.

THE LAW

1. The applicant complains under Articles 5, 8, 9, 10, 14 and 17 (Art. 5, 8, 8, 10, 14, 17) of the Convention that the Parliamentary Election Act of 1993 requires that any political party must obtain at least 5 per cent of the votes in order for its candidates to be elected to the Parliament, whereas political representations of the minorities are exempted from this requirement.

The Commission has examined this complaint under Article 3 of Protocol No. 1 (P1-3) to the Convention. Insofar as the applicant might be understood to be complaining about the parliamentary elections in September 1993, the Commission observes that Poland ratified Protocol No. 1 on 10 October 1994. Thus, an examination under this provision as regards these elections is not possible having regard to the Commission's competence ratione temporis.

Insofar as the complaint can be understood as relating to the events after this date, the Commission recalls the Convention organs' case-law according to which an applicant cannot complain as a representative of people in general, because the Convention does not permit as such an "actio popularis" (No. 10473/83, Dec. 11.12.85, D.R. 45, p. 121). The Commission is required to examine the applicant's complaints only insofar as he himself can substantiate that he is a victim of the alleged violation, i.e that he is affected by the law at issue. In the present case the Commission considers that the applicant has not shown that he was affected in any way by the Act complained of. He cannot, therefore, claim to be the victim of a violation of the Convention within the meaning of Article 25 (Art. 25) of the Convention.

The Commission further considers that the facts as submitted do not disclose any appearance of a violation of the Articles of the Convention as invoked by the applicant.

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

2. The applicant complains under Article 10 (Art. 10) of the Convention that the Court refused to register the titles of the periodicals "Germany -a Thousand year-old Ally of Poland" and "Great Encyclopedia of Herbal Healing".

However, the Commission is not required to examine whether or not the facts submitted by the applicant in support of this part of the application disclose any appearance of a violation of the Convention as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with a matter after all domestic remedies have been exhausted".

In the present case, the applicant failed to file an appeal with the Katowice Court of Appeal against the decision of the Bielsko-Biala Regional Court of 7 July 1994. He also failed to submit within the time-limit a request to have the grounds of the Court's decision of 8 December 1994 recorded in writing and then to file an appeal against this decision with the Katowice Court of Appeal. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant finally complains under Article 10 (Art. 10) of the Convention that the Court refused to register the titles of the periodicals "Germany - a Thousand year-old Enemy of Poland" and "Social and Political Monthly - A European Moral Tribunal", thus making it impossible for him to publish these periodicals.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission, by a majority,

DECIDES TO ADJOURN the examination of the applicant's complaint concerning the refusals to register titles of the periodicals "The Social and Political Monthly - A European Moral Tribunal" and "Germany - a Thousand year-old Enemy of Poland";

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (S. TRECHSEL)