AS TO THE ADMISSIBILITY OF

Application No. 24413/94
by Aleksandra JANUSZEWSKA
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 12 October 1994, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, 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 5 November 1993 by Aleksandra Januszewska against Poland and registered on 16 June 1994 under file No. 24413/94;

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

The applicant, a Polish citizen born in 1928, is a retired judge residing in Lódz.

On 16 September 1991 the applicant requested the President of the Lódz Regional Court to institute proceedings enabling her to take earlier retirement, as she had to take care of her seriously ailing mother. On 10 October 1991 the President of Poland granted her request as the applicant was eligible for early retirement.

On 2 January 1992 the applicant applied for reinstatement to her previous post as her mother's health had improved. She contended that the applicable legal provisions obliged the President of the Lódz Regional Court to transmit her application to the National Judicial Council and that the Council was under a legal obligation to transmit her application to the President of Poland for reappointment. On 4 January 1992 the President of the Lódz Regional Court sent her application to the National Judicial Council.

On 19 February 1992 the National Judicial Council rejected the application. The Council considered that, contrary to the applicant's opinion, the applicable procedure in her case was the same as for any

lawyer eligible to become a judge for the first time. Thus, the application should be submitted to the General Assembly of the Judges of the Lódz Regional Court for assessment of the candidate.

On 4 April 1992 the General Assembly of the Judges of the Lódz Regional Court, in the applicant's absence, considered the applicant's request for reinstatement and decided not to present her to the National Judicial Council as a suitable candidate for a judicial post.

On 16 April 1991 the applicant sent a letter to the Council, claiming that the National Judicial Council had erred in law in deciding on the applicable procedure. The applicant reiterated that the Council was under a legal obligation to submit her application to the President in order for her to be reappointed as a judge to the same post as she had held before, or an equivalent one.

On 24 April 1992, 20 May 1992 and 9 July 1992 the National Judicial Council reiterated its position in its letters to the applicant.

On 26 June 1992 the applicant filed a complaint to the Supreme Administrative Court about the failure of the Council to take an administrative decision to present her application to the President. On 26 August 1992 the Supreme Administrative Court declined to entertain the applicant's complaint as it lacked jurisdiction. The Court considered that decisions of the National Judicial Council in matters concerning appointments or reappointments of judges were not administrative decisions against which an appeal lay, due to the special nature of the tasks of the Council.

On 26 September 1992 the applicant filed an application for leave for an extraordinary appeal to the Minister of Justice. She contended that the applicable laws guaranteed her a right to be reappointed to her previous post or an equivalent one. She submitted that the impugned decision denied her access to court.

On 6 May 1993 the Minister of Justice refused leave for appeal as the contested decision did not manifestly infringe applicable laws. Thus, the necessary requirement for granting leave was not complied with, since "even assuming that (the applicant's) legal opinion was correct, the applicable provisions had been interpreted in (her) case in a different manner." ("Jest to, nawet przy uznaniu Pani pogl*du prawnego za prawidlowy, odmienna interepretacja przepisów maj*cych zastosowanie w niniejszej sprawie.")

COMPLAINTS

The applicant complains under Article 6 of the Convention that the refusal of leave for an extraordinary appeal denied her access to court. She also complains that the proceedings have been unfair as a whole and clearly in breach of numerous applicable provisions of domestic law.

THE LAW

1. Insofar as the applicant's complaints relate to a period prior to 1 May 1993, 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".

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 complains under Article 6 (Art. 6) of the Convention that the decision of the Minister of Justice of 6 May 1993 refusing her request for leave for an extraordinary appeal denied her access to court.

The Commission observes that Article 6 (Art. 6) of the Convention is not applicable to the disputes concerning appointments to the judiciary (see No. 9877/82, Dec. 1.3.83, D.R. 32 p.258). Moreover, Article 6 (Art. 6) does not guarantee a right to institute extraordinary appeal proceedings and such proceedings also do not fall under the scope of this provision. It follows that this complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)