AS TO THE ADMISSIBILITY OF

Application No. 24248/94
by Jerzy JOPKIEWICZ
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 17 January 1994 by Jerzy JOPKIEWICZ against Poland and registered on 1 June 1994 under file No. 24248/94;

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 18 October 1995 and the observations in reply submitted by the applicant on 6 January 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1947, was an engineer, residing in Torun. He died on 29 October 1995. His daughter who resides in Torun is a heir. She expressed the wish to take over and pursue the application, in accordance with her father's will.

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

In 1988 the applicant was working exceptionally hard at his employer's two plants. On 29 December 1988 the applicant suffered a stroke while he was at work. In December 1991 the applicant filed an action with the Torun Regional Court (S*d Wojewódzki) for rectification of errors in the report of the accident, in particular to have the accident acknowledged as an occupational one, and for compensation.

On 27 April 1993 the Torun Regional Court dismissed the applicant's action. The Court found no sufficient reasons to attribute

the responsibility for the accident to the defendant employer as the accident resulted from the applicant's health problems.

Subsequently the applicant asked the Court to grant him free legal assistance. This request was apparently granted and on 29 June 1993 the Torun Bar informed the applicant that advocate M.G. had been appointed to represent him in the appeal proceedings. It appears that later M.G. designated another lawyer, J.K., residing in the vicinity of the Gdansk Court of Appeal (S*d Apelacyjny).

On 29 July 1993 the Gdansk Court of Appeal held a hearing at which neither the applicant nor J.K. were present. The Court noted that the parties to the proceedings were not present, though the information of the date of the hearing had been properly served both on the applicant and on his officially appointed lawyer, and included this information into the transcript. Thereupon the judge rapporteur presented the case to the Court, which subsequently proceeded to deliberations and dismissed the appeal.

Relevant domestic law

The relevant provision of the Polish Code of Civil Procedure reads as follows:

<Translation:>

Article 378:

"A hearing before the court of appeal shall be held irrespective of whether one or both parties to the proceedings are absent..."

<Polish:>

Artykul 378:

"Rozprawa przed s*dem rewizyjnym odbywa si* bez wzgl*du na stawiennictwo jednej lub obu stron. ..."

COMPLAINTS

The applicant complained under Article 3 of the Convention that the judgment of the Gdansk Court of Appeal sanctioned the conduct of the applicant's former employer towards him, who had compelled him to work very hard, which amounted to inhuman and degrading treatment.

He complained under Article 6 of the Convention about unfairness of the proceedings in that the Regional Court disregarded certain evidence and wrongly assessed other evidence. The applicant alleged in particular that the Torun Regional Court was not impartial. Thus, when the proceedings were pending, the Regional Prosecutor was negotiating the purchase of office premises from the defendant.

The applicant further complained under Article 6 of the Convention that the appeal proceedings were unfair in that he could not put forward his submissions to the Court. His interests were therefore not properly presented and protected, particularly as the officially appointed lawyer failed to appear before the Gdansk Court of Appeal without any justification or notice. He submitted that the Court should have adjourned the proceedings to give him an opportunity to put forward his arguments.

The applicant further complained under Article 8 of the Convention that the judgments complained of interfered with his private and family life.

Under Article 13 of the Convention he complained that the Court of Appeal, by upholding the first instance judgment, confirmed the

errors of the Regional Court.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 January 1994 and registered on 1 June 1994.

On 22 February 1995 the Commission decided to communicate to the respondent Government the applicant's complaint concerning the failure of the officially appointed lawyer to be present before the Gdansk Court of Appeal.

The Government's written observations were submitted on 18 October 1995, after the extension of the time-limit fixed for that purpose was refused on 8 August 1995, the request for an extension having been submitted after expiry of the time-limit.

The applicant's daughter replied on 6 January 1996.

THE LAW

1. The Commission notes that the applicant has died and that his daughter has informed the Commission that she wishes to continue the proceedings before the Commission. She submitted that as one of her father's heirs, she has a legitimate legal interest in the outcome of the proceedings before the Commission.

The Government opposed this wish, stating that the applicant's daughter did not have sufficient legitimate interest in the outcome of the proceedings.

Under Article 25 para. 1 (Art. 25-1) of the Convention the Commission "may receive petitions ... from any person ... claiming to be a victim of the rights set forth in (the) Convention".

The Commission considers that in the light of the Convention organs' case-law (Eur. Court HR, Sadik v. Greece judgment of 15 November 1996, paras. 24-26, Reports 1996, to be published; No. 25759/94, Dec. 26.2.96, not published), there is no obstacle to the case being pursued by the applicant's daughter.

2. a) The applicant complained under Article 6 (Art. 6) of the Convention about the unfairness of the proceedings in that the Regional Court disregarded certain evidence and wrongly assessed other evidence. The applicant alleged in particular that the Torun Regional Court was not impartial in that, when the proceedings were pending, the Regional Prosecutor was negotiating the purchase of office premises from the defendant.

Article 6 (Art. 6) of the Convention, insofar as relevant, reads:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...

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 of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". The proceedings complained of ended with a judgment of the Torun Regional Court of 27 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).

b) The applicant further complained under Article 6 (Art. 6) of the Convention that the appeal proceedings were unfair in that he could not put forward his submissions to the Court because the officially appointed lawyer failed to appear before the Gdansk Court of Appeal without any justification or notice.

The Government submit first that the applicant and his lawyer were properly informed of the date of the hearing. They should have requested the court to adjourn the hearing if they had been genuinely prevented from attending on the fixed date. By failing to do so, they have not exhausted domestic remedies.

The Government further submit that the application is in any event manifestly ill-founded. They contend that the applicant was given the opportunity to be effectively represented before the court as he was granted the assistance of an officially appointed lawyer. Moreover, he had been duly informed of the date of the hearing.

The applicant submitted that in the appeal proceedings he was granted the assistance of an officially appointed lawyer. Thus the case was sufficiently complex to warrant presentation of the appeal arguments by a lawyer. The applicant could legitimately have expected that the lawyer would carry out his obligations properly and that he would be present at the hearing. He was therefore justified in not appearing himself. He was moreover under no legal obligation to appear. It should be stressed that the applicant did not have any genuine possibility to ensure the proper conduct of the officially appointed lawyer as there was lawyer-client relationship between them. Therefore it fell to the court to ensure that the applicant's interests were effectively represented. The court limited itself to stating that the parties were absent and proceeded to the deliberations, whereas it should have adjourned the hearing and summoned the parties to the next date. There are no provisions in Polish law which would have prevented the court from doing so.

The Commission recalls that, according to Article 25 (Art. 25) of the Convention, it is competent to receive petitions from any person claiming to be a victim of a violation by one of the Contracting Parties of the rights set out in the Convention. The responsibility of the Contracting Parties is incurred by the actions of its organs. A lawyer, even if he or she is officially assigned, cannot be considered as an organ of a State, and his or her actions are not imputable to the State (No. 27266/95, Dec. 21.10.96, unpublished).

In the present case, the Commission considers that the failure of the officially assigned lawyers to be present at the hearing before the Court of Appeal and their resulting failure to ensure effective representation of his interests before that court, even if it could justify filing a compensation claim against the lawyers by the applicant, do not engage the direct responsibility of the State. 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.

3. The applicant complained under Article 3 (Art. 3) of the Convention that the judgment of the Gdansk Court of Appeal sanctioned the conduct of the applicant's former employer towards him, who had compelled him to work very hard, which amounted to inhuman and degrading treatment.

Article 3 (Art. 3) of the Convention reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission observes that the treatment complained of consisted of upholding the judgment of the lower court which dismissed the applicant's civil claim to have his accident declared as accident at work. The Commission considers that the treatment concerned did not attain the threshold of inhuman or degrading treatment within the meaning of Article 3 (Art. 3) of the Convention as established in the case-law of the Convention organs (cf. Eur. Court HR, Ireland v. United Kingdom judgment of 18 January 1979, Series A no. 25, p. 56, para. 162).

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

4. The applicant further complained under Article 8 (Art. 8) of the Convention that the judgments complained of interfered with his private and family life.

The Commission considers that no separate issue arises under this provision of the Convention. It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant finally complained under Article 13 (Art. 13) of the Convention that the Court of Appeal, by upholding the first instance judgment, confirmed the errors of the Regional Court. However, in accordance with the Commission's established case-law, Article 6 para. 1 (Art. 6-1) of the Convention provides a more rigorous procedural guarantee than Article 13 (Art. 13) of the Convention and therefore operates as a lex specialis with regard to a civil right, to the exclusion of the more general provisions of Article 13 (Art. 13) of the Convention.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber