AS TO THE ADMISSIBILITY OF

Application No. 28249/95
by Henryk KREUZ
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 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 10 May 1995 by Henryk KREUZ against Poland and registered on 18 August 1995 under file No. 28249/95;

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, born in 1955, has dual Polish and Austrian citizenship. He is a technician and resides permanently in Austria.

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

Particular circumstances of the case:

a) criminal proceedings instituted against the applicant

On 3 April 1991 the applicant requested the Plock District Prosecutor (Prokurator Rejonowy) to institute criminal proceedings against third persons on suspicion of committing fraud while concluding an agreement with his company.

On 16 March 1992 the criminal proceedings in question were, despite the applicant's appeals, finally discontinued by virtue of the decision of the Plock Provincial Prosecutor (Prokurator Wojewódzki).

On 13 April 1992 the applicant wrote a memorandum addressed to the President of Poland and the Minister of Justice. The memorandum was entitled: "Loop holes in the law or blind lawyers?". It concerned the applicant's opinion about the quality of the administration of

justice in general and contained the opinion that "... the prosecutor M.N. is a criminal, too ...".

On 22 June 1992 the Plock District Prosecutor instituted criminal proceedings against the applicant.

In the meantime, on an unspecified date, the applicant was charged with the offence of defamation of the prosecutor concerned.

On 27 August 1992 the Plock District Prosecutor lodged a bill of indictment with the Plock District Court (S*d Rejonowy).

In the meantime, on an unspecified date, the applicant requested the court to call evidence concerning the veracity of his statements. He asserted that he had deliberately given the authorities occasion to institute criminal proceedings against him in order to prove that the prosecutor in question had committed an offence.

On 11 December 1992 the Plock District Court convicted the applicant of defamation and sentenced him to a fine of old PLZ 7,000,000.

On 15 June 1993 the Plock Provincial Court (S*d Wojewódzki), upon the applicant's appeal, quashed the judgment of the court of first instance and referred the case back to that court.

On 17 March 1994 the Plock District Court acquitted the applicant.

On 6 December 1994 the Plock Provincial Court, upon both parties' appeals, quashed the acquittal and found the applicant guilty but conditionally discontinued the criminal proceedings against him. The applicant, in his appeal, requested the court to call evidence in order to establish the veracity of his statements relating to the conduct of the prosecutor M.N.

b) zoning approval proceedings

On 10 July 1991 the Plock Town Office granted the applicant a provisional zoning approval concerning the construction of a car-wash.

On an unspecified date the applicant requested the Mayor of Plock to confirm the zoning approval; in particular he requested confirmation that the construction in question could be located in a specific area.

On 23 November 1992 the Mayor of Plock refused to grant the applicant the requested zoning approval.

On 27 January 1993 the Plock Self-Government Board of Appeal (Kolegium Odwolawcze przy Sejmiku Samorz*dowym), upon the applicant's appeal, upheld the decision of 23 November 1992.

On an unspecified date the applicant lodged a complaint against the decision of 27 January 1993 with the Supreme Administrative Court (Naczelny S*d Administracyjny). He submitted, inter alia, that the authorities had arbitrarily found that the development planned by him did not conform with the class of land use set out in the relevant master plan. He alleged serious errors of facts and law committed by the administrative authorities both at first instance and on appeal.

On 27 January 1994 the Supreme Administrative Court quashed the decisions of the organs of first and second instance and referred the case back to the organ of first instance. The court found that the conduct of the authorities in question had amounted to a serious breach of the rule of law. The court held that they had arbitrarily refused the applicant's request for zoning approval and that they had clearly infringed the master plan requirements. In addition, the court

held that the authorities had made erroneous findings of fact in the applicant's case.

On 28 November 1994 the applicant complained to the Plock Governor (Wojewoda) submitting that the Mayor of Plock had failed to issue any decision concerning his request for zoning approval despite being under an obligation to do so within a period of thirty days from the date on which the judgment of the Supreme Administrative Court had been served on him.

On 9 December 1994 the above complaint was transferred to the Plock City Board (Zarz*d Miasta) since the Governor was not competent to deal with such a complaint.

On 2 January 1995 the applicant complained to the Plock Town Council (Rada Miejska) about the fact that the City Board had tolerated the fact that the Mayor had failed to issue any decision on his request for zoning approval.

On 16 January 1995 the applicant again complained to the Plock Governor. He submitted that the organs of the Plock Municipality had violated the law and that their inactivity had amounted to a serious breach of the rule of law. This complaint was apparently transferred to the Plock Self-Government Board of Appeal.

On 1 February 1995 the Plock Self-Government Board of Appeal found that the applicant's complaint concerning the inactivity of the Mayor of Plock was unsubstantiated; however, it also indicated that the Mayor should issue the relevant decision within a period of fourteen days from the date on which the applicant had submitted relevant documents in support of his request for zoning approval.

On 9 March 1995 the applicant again complained to the Plock Town Council about the fact that his case was still not resolved.

c) civil proceedings

On 9 May 1994 the applicant lodged a claim for compensation against the Plock Municipality with the Plock Provincial Court. He requested compensation of PLZ 585,000 arising from the fact that the municipal authorities had not issued any decision concerning his request for zoning approval. He claimed, in particular, that as a result of the inactivity of the relevant authorities and the length of the zoning approval proceedings he had lost money which had been intended for the investment, he had been deprived of future profits and he had lost his prospective partners, who had been about to participate in his investment. He also relied on the judgment of the Supreme Administrative Court of 27 January 1994 in which it had been established that the authorities concerned had been in breach of the rule of law.

On the same date the applicant requested the Plock Provincial Court to exempt him from the compulsory court fees (see Relevant domestic law) on the whole. He submitted that he had no occupation, no sufficient income and that he was not involved in any profit-making activity since his efforts to establish such an activity had been ruined by the municipal authorities' conduct.

On 4 July 1994 the Plock Provincial Court rejected the applicant's claim and found that the claim was premature as the administrative proceedings in question were still pending. The court expressed the opinion that a final ruling on the zoning approval constituted a preliminary condition sine qua non of access to a civil court in the applicant's case. As regards the request for exemption from the court fees, the court decided not to collect such fees as the claim had been rejected, i.e. there had been no need to examine the case on its merits.

On 27 July 1994 the applicant lodged an interlocutory appeal against the decision rejecting his claim. He submitted that he had filed an action based on the general principles of the law of tort and that in such a case no issue of preliminary conditions for access to a civil court arose.

On 1 August 1994 the Plock Provincial Court ordered the applicant to pay a court fee of PLZ 20,000 for lodging the interlocutory appeal.

On 9 August 1994 the applicant again requested the court to grant him a general exemption from court fees. He submitted that he was not able to pay the court fees due since he had put all his savings into the preparation of his intended investment in Poland and that the property he owned at the material time (i.e. a flat in Vienna, his car and the share capital in his company) did not provide him with a sufficient income to pay the amount of court fees required. He submitted a financial declaration according to section 113 para. 1 of the Code of Civil Procedure (see below, Relevant domestic law and practice).

On 12 August 1994 the Plock Provincial Court granted the applicant an exemption from court fees only as regards the interlocutory appeal proceedings.

On 27 September 1994 the Warsaw Court of Appeal (S*d Apelacyjny) quashed the decision of the court of first instance of 4 July 1994. The court held that since the applicant's claim for compensation had been based on civil, not administrative law, no issue of preliminary conditions of access to a civil court had arisen and, therefore, the case should be examined on its merits.

On an unspecified date the case was referred back to the Plock Provincial Court.

On 17 November 1994 the Plock Provincial Court again examined the applicant's request for a general exemption from the court fees. The court found that the fees due for lodging of the claim - PLZ 585,000 - were unusually high. Therefore, the court ordered that the applicant should pay fees not exceeding the amount of PLZ 10,000. The court stated, inter alia: "... the plaintiff, who earns his living from his savings, should be able to pay fees amounting to PLZ 10,000, since he conducted a business activity and invested considerable capital in his investments. When investing his money in a business activity, the plaintiff had to take into account that the fact of engaging in a business activity could in itself imply the necessity of litigation before the courts. Therefore, he should secure [in advance] sufficient financial resources for such purposes [e.g. court fees]."

On 30 November 1994 the applicant appealed against the above order to the Warsaw Court of Appeal. He argued, in particular, that it had been unreasonable of the court of first instance to find that a business activity could imply a necessity of litigation concerning the negligence of the state authorities, since they should be normally expected to act in accordance with the rule of law. He also submitted that it had clearly transpired from his financial declaration that he was unable to pay the court fees due. Moreover, the applicant submitted that in case of any doubts as to his financial situation, the court of first instance had been obliged to verify his declaration under section 116 para. 1 of the Code of Civil Procedure (see below, Relevant domestic law and practice). Finally, he contended that his financial situation had remained unchanged as from 12 August 1994, when the same court had granted him the exemption from the court fees.

On 29 December 1994 the Warsaw Court of Appeal dismissed the above appeal, finding that it was likely that the applicant had spare financial resources at his disposal since he had planned the investments in Poland. The court held that the applicant had been

exempted from most of the court fees due and that there were no reasons for any extra exemption.

Relevant domestic law and practice

1. Domestic remedies against inactivity on the part of the administration

Until 1 October 1995, according to Section 216 of the Code of Administrative Procedure, a party to administrative proceedings could, at any time, lodge with the Supreme Administrative Court a complaint about the fact that an administrative organ had failed to issue a decision requested.

On 1 October 1995 a new Law of 11 May 1995 on the Supreme Administrative Court took effect. Section 216 of the Code of Administrative Procedure was repealed.

According to Section 17 of the Law a party to administrative proceedings may, at any time, lodge with the Supreme Administrative Court a complaint against an inactivity on the part of an organ obliged to issue an administrative decision.

Section 26 of the Law provides:

"When a complaint against an inactivity on the part of the administration is well-founded, the Supreme Administrative Court shall oblige an administrative organ to issue a decision, or to perform a specific act, or to confirm, declare, or recognise a right or obligation provided by law."

According to Section 30 of the Law the decision of the Supreme Administrative Court concerning the inactivity is legally binding on the organ concerned. If the organ in question has not complied with such a decision, the court is competent, under Section 31 of the Law, to fine the organ and to adjudicate upon the right or obligation in question.

2. Court fees

Under Polish law everyone, except public organs and institutions, is obliged to pay a court fee at the time of lodging a statement of claim with the competent court. As the case proceeds, a party is obliged to pay additional court fees at the time of lodging any further appeal and cassation complaint. The court fees incurred are, depending upon the outcome of the case, borne either by the defeated party (who is ordered to pay the whole costs of litigation in a final judgment) or by the unsuccessful plaintiff.

In principle, court fees are based on a percentage (in case of the fee due for lodging a claim or an appeal) or a fraction (in case of the fee due for lodging an interlocutory appeal) of the value of the claim in question.

The Law of 13 June 1967 on Court Fees and Other Charges in Civil Cases (as amended) sets out general principles with respect to the collection of fees by courts.

Section 5 para. 1 of the Law provides:

"1. A court shall collect court fees from the person who has lodged any pleadings which are subject to such fees."

According to Section 8 of the Law, the State Treasury, Municipalities and other public organs or institutions are not obliged to pay court fees, provided that the claim in question does not relate to their commercial activity.

Section 16 of the Law, insofar as relevant, provides:

"1. The court shall not take any action if the court fee due for lodging a given pleading is not paid. In such a case the president of the court shall order the party concerned to pay the fee due within a period not exceeding seven days, on pain of having the pleading returned. If the party does not comply with the time-limit, the pleading shall be returned to this party. ...

3. Any appeal, cassation complaint, interlocutory appeal or objection to a judgment by default ... shall be rejected if the due court fee was not paid within the [above] time-limit."

Section 18 of the Law provides:

"A pleading which has been returned to a party as a result of the fact that the court fee had not been paid, shall not be of any legal effect."

Paragraph 1 of the Ordinance of the Minister of Justice of 17 May 1993 on Court Fees in Civil Cases (as amended) provides, insofar as relevant:

"(4) Where the value of the claim exceeds PLZ 100,000 the court fee shall amount to PLZ 6,600 for the first PLZ 100.000 and 5% of the remaining value of the claim. In any case the court fee due shall not exceed the sum of PLZ 100.000."

The exemption from court fees is subject to the discretion of the court competent to deal with the case.

Section 113 para. 1 of the Code of Civil Procedure provides:

"1. An individual may request the court competent to deal with the case to grant him exemption from court fees provided that he submits a declaration to the effect that the fees required entail a substantial reduction in his and his family's standard of living. Such a declaration shall contain details concerning his family, assets and income. It falls within the court's discretion to assess whether the declaration justifies granting the exemption requested."

Section 116 para. 1 of the Code of Civil Procedure provides:

"1. In case of doubt ... as to the real financial situation of the party requesting exemption from court fees, the court may order the verification of his declaration."

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the criminal proceedings instituted against him were conducted unfairly in view of the wrong application of domestic law and in view of the fact that the courts did not call evidence relating to the veracity of his allegedly defamatory statements.

2. He further complains under Article 6 of the Convention about the inactivity on the part of the Polish authorities and the length of the administrative proceedings concerning the zoning approval before the Plock Municipality.

3. The applicant complains under Article 6 para. 1 of the Convention that he was deprived of access to a court for the determination of his civil rights as the amount of court fees required from him by the Polish courts prevented him from pursuing a civil action against public authorities.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the criminal proceedings instituted against him were conducted unfairly in view of the wrong application of domestic law and in view of the fact that the courts did not call evidence relating to the veracity of his allegedly defamatory statements.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

The Commission recalls that it is not the Convention organs' function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see Eur. Court HR, Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, para. 45). Moreover, the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them (see Eur. Court HR, Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, para. 26).

In the present case the Commission finds no indication that the applicant was prevented from putting forward his point of view in the course of criminal proceedings instituted against him, or that the domestic courts acted unfairly or arbitrarily with respect to the presentation, admissibility or assessment of evidence. There is also no indication that the respective courts lacked impartiality or independence.

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

2. The applicant further complains under Article 6 (Art. 6) of the Convention about the inactivity on the part of the Polish authorities and the length of the administrative proceedings concerning the zoning approval before the Plock Municipality.

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

The applicant lodged various complaints against an inactivity on the part of the Plock Municipality authorities as regards the issue of a zoning approval sought by him. However, according to the relevant domestic law being in force at the material time and at present, a party to administrative proceedings may, at any time, lodge with the Supreme Administrative Court a complaint against an inactivity on the part of an administrative organ. As from 1 October 1995 (i.e. the date on which a new Law on the Supreme Administrative Court took effect) the Supreme Administrative Court is competent either to oblige the organ concerned to issue the decision in question or, in case of a continued inactivity, to adjudicate upon a right or obligation at issue. As a result, the applicant had and has at his disposal a domestic legal channel enabling him to remedy the situation complained of.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies according to Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant complains under Article 6 para. 1 (Art. 6-1) of the

Convention that he was deprived of access to a court for the determination of his civil rights as the amount of court fees required from him by the Polish courts prevented him from pursuing a civil action against public authorities.

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 Commission's Rules of Procedure, to give notice of the complaint to the respondent Government.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention about the lack of access to a court;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber