AS TO THE ADMISSIBILITY OF

Application No. 27382/95
by Miroslaw KRUPINSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
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 October 1994 by Miroslaw KRUPINSKI against Poland and registered on 23 May 1995 under file No. 27382/95;

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 7 May 1996 and the observations in reply submitted by the applicant on 24 May 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, an Australian citizen born in 1939, is an engineer residing in Albany in Australia. He previously had Polish citizenship.

Particular circumstances of the case

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

On 29 September 1982 the Navy Military Court (S*d Marynarki Wojennej) in Gdynia convicted the applicant of pursuing illegal trade union activities, which had been banned by the military regime upon introduction of martial law on 13 December 1981. The applicant was sentenced to three years and six months' imprisonment. On 28 September 1982 the Military Chamber of the Supreme Court upheld the judgment. The applicant served twenty-one months of imprisonment.

On 10 December 1991 the President of the Military Chamber of the Supreme Court (Przewodnicz*cy Izby Wojskowej S*du Najwyzszego) filed an extraordinary appeal against this judgment.

On 21 January 1992 the Supreme Court (S*d Najwyzszy) quashed the judgment, considering that the applicant's conviction was contrary to the principle nullum crimen sine lege as the trade union activities in question had taken place from 13 to 15 December 1981, whereas the official promulgation of the Decree on Martial Law, banning trade union activities, had been effected only on 18 December 1981. The Court accordingly acquitted the applicant.

On 20 October 1993 the applicant filed a request with the Supreme Court for an extraordinary appeal against the judgment of 1982. This request was sent by a recommended letter from Sydney.

In a letter of 23 November 1993 the Supreme Court informed the applicant that his application for leave for an extraordinary appeal would not be entertained as it was devoid of purpose, the applicant's acquittal having been pronounced on 21 January 1992 by the Supreme Court. Any claim for compensation could be dealt with by the Navy Military Court in Gdynia, to which the applicant's letter of 18 October 1992 had been forwarded on 23 November 1993. It was further stated in the letter that the applicant had been represented before the Supreme Court by a lawyer M., practising in Gdansk. The Court further suggested that the applicant, in his own interest, should appoint his representative for the possible compensation proceedings or that he should establish an address in Poland for service of any documents concerning these proceedings since this could significantly expedite the proceedings.

On 17 February 1994 this letter was served on the applicant by the Polish consulate in Sydney.

On 7 April 1994 the applicant filed a request with the Navy Military Court in Gdynia for compensation of 500,000 zlotys for wrongful conviction. He sent this request by registered letter from Sydney. He submitted that the Registry of the Supreme Court in its letter of 23 November 1993 had wrongly informed him that the lawyer M. had represented him during the extraordinary appeal proceedings.

In a letter of 8 March 1996 the Navy Military Court informed the applicant that a first hearing would be held on 4 June 1996. In accordance with the applicable laws, if no representative was appointed, all communications to the applicant would be sent through consular channels, as indicated in the previous communications to the applicant.

On 4 June 1996 the Gdynia Navy Military Court held a hearing in which it decided to request the applicant's former employers to submit evidence concerning his salaries before he left Poland.

On 3 July 1996 the Gdynia Military Court decided that it was not competent to entertain the case and transferred it to the Poznan Regional Military Court (Wojskowy S*d Okr*gowy) as the Navy Military Court had ceased to exist on 1 July 1996.

Relevant domestic law

Article 487 para. 1 of the Code of Criminal Procedure provides that an accused, who has been acquitted as a result of the reopening of the proceedings or of an extraordinary appeal, is entitled to compensation from the State Treasury for the pecuniary and non-pecuniary damage suffered as a result of deprivation of his liberty. The proceedings concerning the compensation claim are to be held before the regional court in whose area of competence the first instance

judgment was pronounced.

Article 124 of the Code provides that a party to proceedings residing abroad is obliged to establish an address in Poland for the purpose of service of the correspondence; in case of a failure to do so, any correspondence shall be sent to his or her last known address in Poland, or, if no such address is known, included in the case-file and considered as having been served.

COMPLAINTS

The applicant complains that the failure of the Navy Military Court to deal with his request or even to acknowledge receipt thereof is in breach of his enforceable right to compensation for detention in contravention of the provisions of Article 5 of the Convention, as guaranteed by Article 5 para. 5 of the Convention.

He submits that he was not represented in the proceedings before the Supreme Court and that in November 1993 the Registry of this Court wrongly informed him that he had been represented by the lawyer M., who in fact had left Poland in 1986. He submits that he learned of his acquittal on 17 February 1994, as it was only on this date that the Polish consulate in Sydney transmitted the relevant documents to him.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 October 1994 and registered on 23 May 1995.

On 29 November 1995 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 7 May 1996, after three extensions of the time-limits fixed for that purpose. The applicant replied on 24 May 1996.

THE LAW

The applicant complains that the failure of the Navy Military Court to deal with his request is in breach of his right to compensation for detention in contravention of Article 5 para. 5 (Art. 5-5) of the Convention. The Commission has examined this complaint under Article 6 para. 1 (Art. 6-1) of the Convention as concerning the length of the proceedings relating to the applicant's compensation claim.

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

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time ...

The Government concede that Article 6 (Art. 6) of the Convention is applicable to proceedings concerning compensation claims for deprivation of liberty referred to in Article 487 para. 1 of the Code of Criminal Procedure and that such compensation claims are of a civil character.

The Government further submit that the case is not complex. However, the exact amount of compensation to be eventually awarded may give rise to considerable difficulties.

The Government maintain that the applicant's conduct has considerably contributed to prolonging the proceedings. In this respect they refer to the fact that in the letter of 23 November 1993

the Supreme Court suggested that the applicant, in his own interest, should appoint his representative for the possible compensation proceedings or that he should establish an address in Poland for service of any documents concerning these proceedings. The applicant failed to do so, despite his legal obligation under Article 124 of the Code of Criminal Procedure. The Government further state that in his action of 7 April 1994 the applicant unequivocally refused to appoint a counsel in Poland and indicated an address in Australia for the purpose of service of court correspondence. Had he done so at the beginning of the proceedings, this would undoubtedly have contributed to their acceleration.

The Government finally submit that the length of the proceedings before the Navy Military Court is reasonable and that there were no shortcomings for which the court could be held responsible. As regards the delay in service of the Supreme Court's judgment to the applicant, this judgment was not served immediately as the applicant's address was unknown to the Court. It was eventually served after he had informed the Court of his address in Australia in his request for an extraordinary appeal of 20 October 1993.

The Government conclude that the length of the compensation proceedings complied with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention. The application should thus be declared manifestly ill-founded.

The applicant submits that he was never informed of the requirements of Article 124 of the Code of Criminal Procedure. The Supreme Court's letter referred to by the Government was only a suggestion, not information of the relevant legal requirements. He decided not to follow it as he did not see any technical reasons why the court correspondence could not be served at his address in Australia. With regard to the Navy Military Court's letter of 8 March 1996, the applicant emphasises that he had not received any previous communications from that Court as it is implied in this letter, including any information as to these requirements. He never refused to appoint a counsel or establish an address in Poland as such requirement was never laid down. There was no need to appoint a counsel as the case was not complex and his claim was obviously well-founded. Finally, the applicant emphasises that if the Court could contact him at his Australian address in March 1996 through consular channels, there had apparently been no legal impediments for doing so earlier.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (Eur. Court HR, Vernillo v. Italy judgment of 20 February 1991, Series A no. 198, p. 12, para. 30). The Commission also recalls that in civil cases the exercise of the right to a hearing within a reasonable time is subject to diligence being shown by the party concerned (Eur. Court HR, Pretto and others v. Italy judgment of 8 December 1983, Series A no. 71, pp. 14 et seq., paras. 33 et seq.).

The Commission observes that the case does not appear to be complex. The only issue to be determined is the sum of compensation and no facts are in dispute between the parties. The Commission further observes that the authorities remained inactive between 7 April 1994, the date on which the applicant's compensation claim was filed with the Navy Military Court, and 8 March 1996, the date of the Court's first letter to the applicant, informing him of the date of the first hearing to be held. The Commission further notes that the applicant neither appointed a representative in Poland to represent him before the Court nor established an address in Poland for service of the court correspondence. In the Supreme Court's letter of 23 November

1993 he was informed that taking one of these measures would significantly expedite the proceedings before the Navy Military Court. It is true that he was not informed by the Supreme Court of the formal requirements applicable to a party to the proceedings residing abroad as stated in Article 124 of the Polish Code of Criminal Procedure. However, the Court was under no legal obligation to do so. The applicant should have been aware that it was in his best interest to follow the suggestion contained in the Supreme Court's letter. He further persisted in his refusal after the Navy Military Court informed him of the relevant requirements in its letter of 8 March 1996. The Commission considers that on the whole the applicant has not shown appropriate diligence in that he failed to comply with the applicable legal requirements concerning the service of court correspondence with parties residing abroad.

In the light of the criteria established by the case-law and having regard to the circumstances of the present case, the Commission concludes that the length of the proceedings was not excessive.

It follows that 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
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber