AS TO THE ADMISSIBILITY OF

Application No. 26168/95
by Eugeniusz KUBON
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 1996, 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
L. LOUCAIDES
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 12 April 1994 by Eugeniusz KUBON against Poland and registered on 10 January 1995 under file No. 26168/95;

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

The applicant, a Polish citizen born in 1961, is serving a prison sentence in Nowy Wisnicz prison.

Apparently in March 1993 the applicant was remanded in custody on suspicion of multiple aggravated theft. On 14 June 1993 the Myslenice police completed the investigations against the applicant.

On 17 June 1993 the Myslenice Public Prosecutor prepared an indictment against the applicant. It charged him with aggravated theft. On 2 July 1993 the indictment was served on the applicant.

On 5 July 1993 the Court held the first hearing. The next hearing was held on 30 August 1993 and the third one on 12 October 1993. Throughout the proceedings before the court the applicant was assisted by an officially appointed lawyer.

On 12 October 1993 the Myslenice District Court (S*d Rejonowy) convicted the applicant of multiple aggravated theft and sentenced him to four years' imprisonment and a fine of 5 million zlotys.

The Court found that the applicant, in the period from 18 August 1992 to 16 March 1993, had committed four aggravated thefts, involving burglary in one restaurant and three shops.

The Court heard the applicant, a co-accused A.M. and five other witnesses. The Court further considered as evidence the fingerprints found on two sites, the traces of gloves found on one site and later found among the applicant's belongings, and the footprints found on one site. The Court had regard to the testimony of three persons, whose property had been stolen. They stated that certain objects found in the apartments of the applicant and the co-accused U., belonged to them. The Court also relied on the testimony of the co-accused A.M., a taxi-driver, who had provided transport after the thefts. He recognised that he had helped the accused and made detailed statements as to the events concerned and the applicant's role therein. His testimony was detailed and consistent, and it corresponded to the evidence given by five other witnesses. A.M. had given his testimony during the investigation and availed himself of his right not to testify before the court, but confirmed that his deposition made at the pre-trial stage was accurate. The Court also considered as evidence photographs belonging to A.M., found on the site of one theft. The Court noted that the applicant and the co-accused had refused to testify during the investigations. Before the Court the applicant had denied any involvement in the thefts. However, he had not been able to give any convincing explanation as to his whereabouts on two of the critical nights and had refused to reply to the questions as to his whereabouts on two other nights. The accused U. refused to testify before the Court. The Court concluded that on the whole the evidence was sufficient to establish that the accused were guilty.

On 21 December 1993 the applicant lodged an appeal against this judgment.

On 2 February 1994 the Kraków Regional Court (S*d Wojewódzki) upheld the judgment.

COMPLAINTS

The applicant complains under Articles 5 para. 1 and 6 para. 1 of the Convention that the courts relied on forged evidence and wrongly assessed the evidence; that he was convicted on insufficient evidence and that the courts disregarded his requests to take evidence as to his whereabouts on the critical nights.

The applicant further complains under Article 6 para. 3 (b), (c) and (d) of the Convention that he did not have sufficient time to prepare his defence and that the Regional Court accepted the appeal submitted by the officially assigned lawyer.

THE LAW

1. The applicant complains under Articles 5 para. 1 and 6 paras. 1 and 3 (b), (c) and (d) (Art. 5-1, 6-1, 6-3-b, 6-3-c, 6-3-d) of the Convention about his conviction by Polish courts and also of the proceedings concerned.

The Commission has examined these complaints under Article 6 of the Convention.

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

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing...
...
3. Everyone charged with a criminal offence has the following minimum rights: ...
...
b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

The Commission recalls that the guarantees contained in paragraph 3 of Article 6 (Art. 6) of the Convention are specific aspects of the general concept of fair trial set forth in paragraph 1 of this Article. In the circumstances of the present case, it will consider the applicant's complaint under the two provisions taken together (see Eur. Court HR, Isgrò v. Italy judgment of 19 February 1991, Series A no. 194-A, p. 12, para. 31).

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see No. 21283/93, Dec. 5.4.94, D.R. 77-A, p. 81, 88).

The Commission further recalls that the admissibility and assessment of evidence are primarily matters for domestic courts, and that States enjoy a certain margin of appreciation in this respect (cf., mutatis mutandis, Eur. Court HR, Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, para. 26). In particular, Article 6 para. 3 (d) (Art. 6-3-d) does not give an accused an unlimited right to obtain the examination of witnesses on his behalf. The judge may refuse to hear a witness if he considers that the witness's statement would not be relevant (cf. No. 10486/83, Dec. 9.10.86, D.R. 49 p. 86).

The Commission further recalls that it is for the competent authorities to decide whether the accused defends himself in person or with the assistance of a lawyer nominated by himself or designated ex officio. If he is represented by a lawyer, it is in principle through the latter that he normally exercises his procedural rights (No. 7138/75, Dec. 5.7.77, D.R. 9 p. 50).

In the present case the Commission observes that the courts had ample evidence from various sources, including the testimony of five witnesses and the detailed confession of the one of the co-accused, made at the pre-trial stage and confirmed before the court. The Court also had at its disposal the material evidence, such as the fingerprints found on two sites, the traces of gloves found on one site and later found among the applicant's belongings, and the footprints found on one site. The Court was thorough in its consideration of the credibility of evidence, as appears from the grounds of the judgment. The applicant, who was represented by a lawyer, had sufficient

opportunity to put forward his arguments and request the taking of evidence. In these circumstances, the Commission considers that there is no indication of arbitrariness in the assessment of evidence. Furthermore, the applicant has not shown that he requested the court to take any evidence which the court refused to hear. The Commission further considers that the applicant has not shown in what way the fact that the court accepted the appeal submitted by the officially assigned lawyer negatively affected the fairness of the proceedings.

Insofar as the applicant complains that he did not have sufficient time to prepare his defence, the Commission considers that he did not substantiate this complaint by indicating the date of service of the indictment. The Commission further observes that the applicant was assisted by an officially assigned lawyer. Thus he was in a position to complain about the alleged belated service of the indictment and to request an adjournment of the first hearing. He did not, however, avail himself of this possibility. Moreover, the Myslenice District Court held at least two further hearings and the judgment was pronounced in October 1993.

Consequently, in the circumstances of the present case, the Commission finds no appearance of a violation of the rights of the defence or of the applicant's right to a fair trial, as guaranteed by Article 6 (Art. 6) of the Convention.

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