AS TO THE ADMISSIBILITY OF

Application No. 25291/94
by Andrzej LAJTNER
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1995, the following members being present:

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

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 2 May 1994 by Andrzej LAJTNER against Poland and registered on 23 September 1994 under file No. 25291/94;

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

Particular circumstances of the case

The applicant, a Polish citizen born in 1966, is a mechanic technician, currently residing in Germany.

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

In September 1990 the Racibórz District Court (Sąd Rejonowy w Raciborzu) instituted proceedings to investigate whether the applicant and his wife took adequate care of their first son, D., born in 1989. The Court found no reasons for protective measures.

On 24 April 1991 the Racibórz District Court restricted the applicant's and his wife's parental rights over their two sons, born in 1989 and 1990. It appointed a guardian to supervise the parents in their exercise of custody rights.

On 8 November 1991 and again on 8 December 1992 the Racibórz District Court placed the children in public care.

On 28 January 1992, following a court order, the applicant was examined by a psychiatrist. On 9 February 1992 an expert opinion of a psychiatrist, an education specialist and a psychologist found that the applicant suffered from reactive neurosis and that his approach towards the upbringing of his children did not ensure their proper emotional and social development.

On 17 February 1993 the Racibórz District Court withdrew the applicant's right of care and custody over his children. The Court considered evidence given by the applicant's former girlfriend, by his neighbours, schoolteachers, nurses in a creche, the guardian and social workers. The Court found it established that the children had often been beaten. The older son D. had a syndrome of a neglected child, was aggressive and not capable of establishing good contact with other children. He often smelt of urine as his clothes had not been changed when wet. The younger boy was also underdeveloped for his age and appeared often to be hungry. The applicant had a busy social life and entertained numerous persons in his flat, often late at night, without regard to the children's needs of peace and stability. He failed to give them medical treatment recommended by a doctor and to take them to hospital when necessary.

The Court considered that the applicant lacked parental skills; this was understandable in view of his own history as he had been raised in a children's home. He could not establish contact with the children, was too harsh in dealing with them and beat them, which amounted to an abuse of the parental rights. The Court pointed out that

criminal proceedings against the applicant for ill-treatment of children were pending. The Court observed that already twice proceedings had been instituted with regard to the exercise of custody rights by the applicant. In previous proceedings the Court had ordered that the children be given back to their father; thus he had had eight months to improve his ways of caring for them. In view of his failure to use this opportunity properly, the Court concluded that there were no sufficient prospects that the applicant would learn how to take adequate care of his children. The Court commented unfavourably on the applicant's unstable situation as he did not work and had not any stable sources of income. The Court concluded that it was in the best interests of the children to withhold the applicant's custody rights and place the children in public care.

On 13 May 1993 the Katowice Regional Court (Sąd Wojewódzki w Katowicach), upon the applicant's appeal, upheld the contested judgment. The Court noted that the lower court had heard numerous witnesses, including witnesses called by the applicant, and had gathered further evidence. The District Court had carefully assessed the evidence and there was no indication of arbitrariness. The findings of the Court fully supported the conclusion that the applicant lacked parental skills and had failed to correct his behaviour towards his sons even though he had twice been given an opportunity to change his ways.

On 26 May 1993 the applicant lodged a request to the Minister of Justice for leave for an extraordinary appeal.

On 7 September 1993 the Racibórz District Prosecutor instituted criminal proceedings against the applicant for having abducted the children from the children's home. Those proceedings were apparently later suspended.

On 8 September 1993 the Racibórz District Court ordered the applicant's detention on remand as on several occasions he had without justification failed to attend the court hearings in the criminal proceedings relating to the charge of ill-treatment of the children. On 18 September 1993 the applicant was remanded in custody.

On 20 September 1993 the Minister of Justice refused leave for an extraordinary appeal against the judgment of the Katowice Regional Court of 13 May 1993, concerning the withdrawal of the applicant's parental rights.

On 28 October 1993 the Racibórz District Court sentenced the applicant to six months' imprisonment for ill-treating his children. The Court found that the applicant had on numerous occasions beaten the children, used vulgar words towards them, had been leaving them at home alone, also in the night; and when they had been ill, which had often happened, he failed to give them proper medical treatment as recommended by doctors. The Court had regard to the evidence given by the applicant's former girlfriend, by his neighbours, schoolteachers, and nurses in a creche. It appears that the applicant filed an appeal.

On 18 October 1993 the Racibórz District Court dismissed the applicant's request for release from detention on remand as there was a risk of absconding. On 3 December 1993 the Court on the same grounds again refused to release him.

On 10 December 1993 the Racibórz District Court convicted the applicant of misappropriation of alimony to which his children were entitled and sentenced him to a fine.

On 30 December 1993 the Katowice Regional Court granted the applicant's appeal against the decision of 3 December 1993 and ordered his release. On 19 January 1994 the Racibórz District Prosecutor again instituted criminal proceedings against the applicant on the charge of having abducted his children from the children's home.
On 14 February 1994 the execution of the remainder of the sentence of 28 October 1993 was apparently suspended.

Relevant domestic law

The relevant section of the Family and Custody Code (Kodeks Rodzinny i Opiekuńczy) provides:

<Translation>

Section 111:

"1. If (...) parents abuse their custody rights or neglect their parental obligations in a flagrant manner, the court shall take away their custody rights.(...)
2. If grounds on which the care and custody rights were taken away cease to exist, the court may restore them."

<Original:>

Artykuł 111:

"1. Jeżeli (...) rodzice nadużywają władzy rodzicielskiej lub w sposób rażący zaniedbują swoje obowiązki względem dziecka, sąd opiekuńczy pozbawi rodziców władzy rodzicielskiej. (...)
2. W razie ustania przyczyny, która była podstawą pozbawienia władzy rodzicielskiej, sąd może władzę rodzicielską przywrócić."

COMPLAINTS

The applicant complains of the various proceedings and their outcome. He complains that he was deprived of his parental rights; that he was ill-treated upon his

arrest and wrongly detained; that the courts wrongly assessed the evidence before them and that he was convicted despite exonerating evidence. He applicant relies on Articles 3, 5-8, 10 and 14 of the Convention.

THE LAW

1. The applicant complains of the various proceedings and their outcome. He relies on Articles 3, 5-8, 10 and 14 of the Convention.

2. 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 insofar as the application relates to the period before 30 April 1993, it 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.

3. The applicant complains about a breach of his parental rights under Article 8 of the Convention, which states, insofar as relevant:

"1. Everyone has the right to respect for his private and family life(...)

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission has examined these complaints in respect of the decision to deprive the applicant of his parental rights. The Commission recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life (Eur. Court H.R., Margareta and Roger Andersson judgment of 25 February 1992, Series A, no. 226, p. 25, para. 72).

In the present case the Katowice Regional Court deprived the applicant of his right of care and custody over his children. This measure therefore constituted an interference with the applicant's right to respect for his family life as ensured by Article 8 para. 1 of the Convention and falls to be justified under Article 8 para. 2 of the Convention.

The Commission notes that the courts, when deciding on the withdrawal of the applicant's parental rights, relied on Section 111 of the Family and Custody Code.

According to this provision, if parents abuse their custody rights or neglect their parental obligations in a flagrant manner, the court shall take away their custody rights. The interference was therefore "in accordance with the law".

The Commission further considers that the decisions at issue pursued the legitimate aim of "protection of health (and) morals", and "the protection of the rights and freedoms of others", i.e. of the children concerned, within the meaning of Article 8 para. 2 of the Convention.

The Commission must next determine whether the interference was "necessary in a democratic society" within the meaning of Article 8 para. 2. This condition implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued.

The Commission observes that the Regional Court in its decision of 13 May 1993 confirmed the decision of the District Court which had taken voluminous evidence and heard many witnesses as regards the quality of care which the applicant had afforded to his children. The District Court had noted in particular that the children were severely neglected and that the applicant had failed to take care of them adequately. The applicant had been examined by specialists in psychology and education with a view to assessing his parental abilities. The Court had carefully balanced the interests involved and decided that the interests of the children's welfare should outweigh those of the applicant.

Taking into account the margin of appreciation which is left to Contracting States in such circumstances (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68) the Commission does not find that the authorities acted unreasonably when balancing the interests involved.

The Commission therefore considers that the interference with the applicant's right to respect for his family life was justified under Article 8 para. 2 of the Convention in that it could reasonably be considered "necessary in a democratic society" for the "protection of the rights and freedoms of others" and for "the protection of health (and) morals".

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant complains under Article 5 of the Convention that he was wrongly detained.

Article 5 para. 1 of the Convention provides, insofar as relevant:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:(...)
a. the lawful detention of a person after conviction by a competent court;

(...) c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence (...)."

The Commission notes that the applicant's detention was ordered in view of the fact that the applicant had repeatedly failed to attend court hearings even though he had been properly summoned. There was a "reasonable suspicion" that he had committed the criminal offence of ill-treatment of his children, supported by detailed findings of the Court in the proceedings relating to the applicant's parental rights. The applicant was detained on remand for forty days, while for the subsequent two months and two days the detention was due to his "conviction by a competent court" within the meaning of Article 5 para. 1 (a) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. The applicant further complains under Article 6 of the Convention of the various proceedings and their outcome.

The Commission has examined these complaints in respect of the proceedings which took place after 1 May 1993. The Commission recalls that under Article 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 e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 p. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 p. 31, 45).

In the present case there is no indication that in the proceedings concerned the applicant could not duly put forward his submissions or any further exonerating evidence, or that the proceedings were otherwise unfairly conducted.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. Insofar as the applicant also invokes Articles 3, 7, 10 and 14 of the Convention, the Commission has examined the remainder of the applicant's separate complaints as they have been submitted by him. However, after considering these complaints as a whole, the Commission finds that they do not disclose any appearance of a violation of the Convention. It follows that the remainder of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (H. DANELIUS)