SUR LA RECEVABILITÉ

Application No. 26226/95
by Zofia LELUJKA
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 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. SVÁBY

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 6 June 1995 by Zofia LELUJKA against Poland and registered on 17 January 1995 under file No. 26226/95;

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 is a Polish citizen born in 1946. She is a laboratory technician, residing in Ostrol*ka.

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

In 1983 the applicant took up a relationship with H.K. In July 1987 the applicant and H.K. applied to become members of the Ostrol*ka Council of the Family Gardens Association "Bemowo" and to be allocated a gardening plot in the Association's garden. In the same year the Council accepted H.K. as a member and allotted plot No. 571 to him. The applicant and H.K. used the plot together.

In early 1993 the relationship broke down and H.K. returned to his wife. In March 1993 the applicant submitted an application to the Association, requesting acknowledgment that she had acquired the right to use the gardening plot.

On 24 April 1993 the Board, having heard the applicant and H.K., dismissed her application and declared that it was H.K. who was entitled to use the plot. The Board considered that the decision to allocate the plot had been issued in H.K.'s name; that he had paid the allocation fee and the rates. The Board informed the applicant that no appeal was possible against this decision.

The applicant complained to the Regional Board of the Family Gardens Association. She submitted that H.K. could not have validly acquired plot No. 571, as in 1987 he had possessed, together with his wife, a plot on his name in another garden, whereas the applicable regulations of the Association prohibited the same person from possessing two plots. She had been using the plot for ten years and had borne necessary expenses together with H.K. She had never been served the decision of 24 April 1993 and had only informal information about its content.

Apparently on 18 August 1993 the Arbitration Committee of the "Bemowo" garden declared that in 1987 the plot had been allotted to H.K. The applicant appealed to the Regional Arbitration Committee. She submitted that as H.K. had been her life companion, she should have been considered as his wife in respect of the right to use the plot. H.K. could not have been allotted the plot in 1987, as he then had already had one, used by his wife.

On 10 October 1993 the Regional Arbitration Committee informed the applicant that no appeal to that Committee was possible as no formal decision of the lower Arbitration Committee had been issued.

The applicant complained to the National Board of the Family Gardens Association. On 26 November 1993 the National Board requested that the Regional Board properly investigate the applicant's complaints, and commented unfavourably on the Regional Board's inability to proceed coherently in the case. In January 1994 the Regional Board informed the National Board that it was H.K. who had been allotted the plot in 1987. This decision was in accordance with the internal regulations of the Association as in 1985 he had lost his other plot through the dissolution of the marital property. Thus the applicant could never have acquired the plot concerned as only a married couple could acquire a common use of a plot as an element of the marital property. In letters of January, February and March 1994 to the applicant the Regional and National Board several times reiterated this position.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the authorities of the Association failed to take her arguments into consideration and, as a result, issued incorrect decisions contrary to the applicable regulations of the Association. She complains that no appeal to the court against these decisions was possible.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention that the authorities of the Association failed to take her arguments into consideration and, as a result, issued unlawful decisions contrary to the applicable regulations of the Association.

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

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

The Commission observes at the outset that it cannot receive applications against private associations. It follows that this complaint is incompatible ratione personae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

It is true that the applicant also complains about the lack of access to court. She complains in particular of the decisions of the authorities of the Family Gardens Association concerning the

determination of the dispute relating to her right to use the plot. However, the Commission recalls that Article 6 (Art. 6) of the Convention is not applicable to proceedings concerning the recognition of a "right" which has no legal basis in the State in question (No. 12763/87, Dec.14.7.88, D.R. 57 p. 216).

In the present case the applicant wished to obtain a decision acknowledging that the plot had been allotted to her. It is true that such a right could be considered to have a civil character, as it involves an exclusive right to use a plot for gardening purposes and ownership of the produce. However, it transpires from the applicant's submissions that the domestic law did not provide the applicant with a right to be allotted such a plot in her particular situation. The applicable regulations expressly state that gardening plots could be allotted either to one person, or to a married couple. Thus, the applicant had not herself applied to have the plot allotted, as it had been H.K. who had done so. As she was not married to him, she could not have acquired this right by marriage. Thus, it could not be considered, even on arguable grounds, that the proceedings at issue concerned the applicant's civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Therefore this provision is not applicable and, consequently, the right of access to court for the applicant cannot be derived from this provision.

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M. T. SCHOEPFER) — (H. DANELIUS)