AS TO THE ADMISSIBILITY OF

Application No. 25033/94
by Krzysztof MISIORNY
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 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
A. ARABADJIEV

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 1 March 1994 by Krzysztof MISIORNY against Poland and registered on 30 August 1994 under file No. 25033/94;

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

The applicant, a Polish citizen born in 1966, is a policeman residing in Racot.

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

In March 1993 the applicant obtained a negative assessment of his service.

On 30 September 1993 the Koscian District Police Commander (Komendant Rejonowy Policji) issued a further assessment of the applicant's service, stating therein, inter alia, that the applicant's work was barely satisfactory; that since the previous assessment in March 1993 there was a certain improvement in his performance of preventive tasks, but no tangible amelioration with regard to operational work. It was further stated that the assessment did not amount to a disapproval of the applicant's work.

On 15 October 1993 the applicant lodged an appeal with the Leszno Regional Police Commander (Komendant Wojewódzki Policji), claiming that the opinion was inaccurate and unfair; that it contained general and vague statements; that it did not sufficiently refer to any concrete facts and that it lacked objectivity.

On 16 November 1993 the Regional Police Commander upheld the assessment, considering that it did not contain a negative evaluation of the applicant's work and that the District Commander was objective in issuing it. The applicant filed an appeal with the Supreme Administrative Court (Naczelny S*d Administracyjny), claiming that the decision should be quashed as not being in conformity with the law. He submitted that the Regional Police Commander in its decision to uphold the assessment failed to refer to the facts which had served as a basis for his decision and to indicate the evidence on which he had relied.

On 28 January 1994 the Supreme Administrative Court rejected the applicant's appeal, considering that assessment of police service did not constitute an administrative decision within the meaning of the Code of Administrative Procedure and therefore no appeal to the Court lay against it.

Relevant domestic law

Under the Police Act members of the police force are subject to periodical assessment of their service. The assessment is subject to an appeal to a hierarchically higher superior. A policeman may optionally be transferred to a lower post if a failure to comply with the professional obligations is confirmed by two subsequent assessments between which at least six months have elapsed. A policeman may optionally be dismissed from service if he fails to comply with his professional obligations and this is confirmed by two subsequent assessments between which at least six months have elapsed.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that he was deprived of access to court in that no appeal to the Supreme Administrative Court lay against the assessment of his service.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he was deprived of access to court as regards the assessment of his service.

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

> "1. 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 recalls that according to the Convention organs' case-law disputes relating to the recruitment, careers and termination of service of public servants are, as a general rule, outside the scope of Article 6 para. 1 (Art. 6-1) of the Convention (Eur. Court HR, Massa v. Italy judgment of 4 August 1993, Series A no. 265-B, p. 20, para. 26; Neigel v. France judgment of 17 March 1997, Reports 1997-II, No. 32, para. 12).

In the present case the applicant contested the accuracy of the statements contained in the assessment of his service. It might be reasonably argued that the actual contents of the assessment might have

affected the prospects of the applicant's promotion. However, the Commission observes that it was clearly stated in the assessment that it should not be considered as being a negative one. The Commission considers that the assessment related only to the applicant's "career". The Commission further observes that there is no indication that under the Police Act the applicant's financial position as regards his salary was in any way affected by it as it did not contain disapproval. Moreover, the Commission observes that the applicant did not submit any financial claims in the domestic proceedings. The Commission concludes that the proceedings in question did not have any direct pecuniary consequences for the applicant and thus cannot be regarded as concerning the determination of civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Therefore, this provision is not applicable to the proceedings concerned and, consequently, the right of access to court for the applicant cannot be derived from this provision.

It follows that 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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber