AS TO THE ADMISSIBILITY OF

Application No. 26173/95
by Stanislaw MLECZKO
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 13 September 1995, the following members being present:

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

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 25 April 1994 by Stanislaw Mleczko against Poland and registered on 10 January 1995 under file No. 26173/95;

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

Particular circumstances of the case

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

The applicant, a Polish citizen born in 1947, is a technician. He is currently serving a prison sentence in Goleniów prison.

On 12 May 1991 the applicant left Szczecin, returning by night train on 28 May 1991 in the morning. Having learnt upon his return that his friend Kl. had been arrested by the police, he went to the District Prosecutor's office to obtain information about her whereabouts. He was informed that she had been arrested. He left the office and sat on the bench outside, whereupon he himself was also arrested and, on 30 May 1991, remanded in custody.

On 26 February 1993 the Szczecin Regional Court (S*d Wojewódzki) convicted the applicant of aggravated theft and robbery and sentenced him to eight years' imprisonment. Four other persons were also convicted of aggravated theft and robbery. The Court found that during the evening of 27 May 1991 the five accused had met at the apartment of K., one of the accused, and broken into a shop in Szczecin and stolen merchandise. After they had left the shop, they had met two Swedish citizens J. and L., and invited them to the apartment of K.,

with a view to robbing them. They had spent some time drinking alcohol in the apartment. Later Kl. had taken L. to the kitchen, whereupon the applicant and the accused T.B. had beaten him severely until he lost consciousness and stolen his money and other belongings. Subsequently the applicant and the accused T.B. had beaten J. After M.B., another co-accused, had taken J. out of the apartment, the latter had fled. Later the applicant and T.B. had dragged L. out of the apartment and left him in the staircase.

The Court thereby relied on the testimony of the accused, as well as on the statements of the victims of the robbery, which they had made during the investigations. The judgment further referred to the list of the stolen objects found in the apartment and on the person of one of the accused. The applicant denied his involvement in the offences and stated that he had left Szczecin on 12 May 1991 and come back in the early morning of 28 May 1991.

The Court further found that there were certain shortcomings in the evidence in that it consisted mainly of the testimony of the five accused. The applicant could not have been confronted with the victims for identification as they had left Poland before he had been arrested. It had been impossible to hear the victims before the Court as they had not complied with the summonses. Their testimony during the investigations had not enabled a full establishment of the facts, as on the critical night both had been too drunk to have a clear recollection of the events. It was nevertheless possible to establish the facts on the basis of the extensive evidence given by the accused, even though on certain points their testimony was contradictory. With regard to the applicant's participation in the material events, the Court considered that K., Kl. and M.B., who had been heard by the Prosecutor immediately after being arrested and later during the investigations, had on both occasions stated that the applicant had participated both in the theft and in the robbery. They had not had any doubts as to his identity. It was only before the Court that they stated that his name was suggested to them by a policeman who had conducted the investigations. Furthermore, before the Court they had confirmed their earlier statements as to the course of events and changed them only with regard to the applicant's involvement. In the Court's view, this negatively affected their credibility in this respect.

The applicant appealed against the judgment. He complained that the Szczecin Regional Court had refused to hear the victims with regard to certain circumstances other than those which had already been covered by their testimony during the investigations. He contended that the victims regularly visited Poland; thus the Court had been wrong in deciding that it would be impossible to effectively summon them. The applicant also complained that the Court had disregarded the applicant's argument that he had not been in Szczecin during the material night. Thus, the conviction was based on insufficient evidence and the applicant should have been acquitted. He further complained that he should have been presented to the victims for identification.

On 14 October 1993 the Poznan Court of Appeal (S*d Apelacyjny) upheld the judgment. The Court considered that the applicant's conviction was based mainly on the evidence which K., Kl. and M.B. had given during the investigations. Their evidence fully corresponded to the statements of the victim J. during the investigations. Kl. had been arrested in the apartment of K., when she came to find the applicant's identity card which he had lost there. Moreover, M.B. had stated during the investigations that the applicant had not only participated in the robberies and divided the loot, but had played the role of instigator. The Court had regard to the Swedish crowns and a watch found on T.B. and to his statements that they had been taken from one of the victims. As to the theft, the Court considered that the statements of Kl., K. and M.B. during the investigations corresponded to the testimony of Kl. and M.B. before the Court. Although M.B. had

said before the Court that he had never met the applicant, the Court observed that his testimony in this respect was illogical and contradicted his earlier statements. M.B. had failed to submit any plausible reason for this change in his statement. Other testimonies, in particular those of Kl. and K., did not lend credibility to the applicant's denials as to his involvement. The Regional Court was justified in its decision not to hear the victims since the summonses proved ineffective as they resided in Sweden. The fact that the applicant had not been confronted with them for identification did not in itself affect the soundness of the judgment. Having considered all these factors, the Court concluded that the applicant's guilt had sufficiently been established on the basis of the extensive testimony given by the accused. Thus the questioning of the victims, one of whom had been very drunk at the material time, would not have altered the assessment of his guilt.

Relevant domestic law

Article 402 of the Polish Code of Criminal Procedure concerning the taking of evidence before the court of second instance provides that in principle it cannot take evidence. However, it can exceptionally take evidence at a hearing if it can expedite the proceedings. The court can at any time take evidence from a document or an expert opinion.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention of the criminal proceedings instituted against him and their outcome.

The applicant complains under Article 6 para. 2 of the Convention that he was convicted on the basis of insufficient evidence as the Courts proceeded from the assumption that he was guilty. He contends that he is not guilty.

He further complains under Article 6 para. 3 (d) of the Convention that the Szczecin Regional Court refused to hear the victims as witnesses and that he could not question them, either during the investigations or before the Court. He complains that the Court refused to hear certain witnesses for the defence who would have stated that he had not been in Szczecin on the critical night.

THE LAW

The applicant complains of the criminal proceedings instituted against him and their outcome. He relies on Article 6 paras. 1, 2 and 3 (d) (Art. 6-1, 6-2, 6-3-d) of the Convention.

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".

In the present case the judgment of the Szczecin Regional Court was pronounced on 26 February 1993. The Szczecin Court of Appeal dismissed the applicant's appeal on 14 October 1993. It follows that the Commission lacks competence ratione temporis to review the proceedings before the Szczecin Regional Court. These proceedings may however be taken into account as background to the issue whether those in the Szczecin Court of Appeal were fair (cf. Eur. Court H.R., Kerojärvi judgment of 19 July 1995, Series A no. 328, para. 41; mutatis mutandis, Hokkanen judgment of 23 September 1994, Series A no. 299-A, p. 19, para. 53). The Commission observes that the Court of Appeal had competence to rectify shortcomings of the taking of evidence before the

Regional Court. If the shortcomings of the taking of evidence by the lower court were such that they could not have been remedied, the Court of Appeal could quash the judgment and order that the case be reconsidered.

Insofar as the applicant complains of the outcome of the proceedings, submitting in particular that he is not guilty, the Commission recalls that under 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. 21983/93, Dec. 5.4.94, D.R. 77-A, p. 81, 88).

It is true that the applicant also complains of the proceedings under Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention. He first complains that the Szczecin Regional Court refused to hear the victims as witnesses and that he could not question them, either during the investigations or before the Court. He also complains that the Court refused to hear certain witnesses for the defence who would state that he had not been in Szczecin on the critical night.

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

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law....
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
> ...
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> 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 notes that these complaints are directed against the proceedings before the Regional Court which, for the reasons stated above, fall outside the Commission's competence.

Insofar as the applicant can be understood as indirectly complaining also of the proceedings before the Court of Appeal, the Commission finds no unfairness in the manner in which the Court of Appeal examined the applicant's appeal.

It follows that the Commission is not competent ratione temporis to examine this part of the application insofar as it concerns the proceedings before the Regional Court and that the complaints are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention insofar as they concern the proceedings before the Court of Appeal.

The applicant finally complains under Article 6 para. 2 (Art. 6-2) of the Convention that he was convicted on the basis of insufficient evidence as the Courts proceeded from an assumption that he was guilty.

The Commission recalls that the presumption of innocence will be violated if, without the accused's having previously been proved guilty

according to law, a judicial decision concerning him reflects an opinion that he is guilty (Eur. Court H.R., Barberà, Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 31, para. 67 et seq.).

In the present case the applicant does not adduce any argument which would indicate that the presumption of innocence was disregarded in the proceedings at issue, other than his criticism of the assessment of evidence made by the courts. It does not appear from the case-file that during the proceedings the courts took any decisions reflecting an opinion that the applicant had committed the acts with which he was charged.

It follows that the remainder of 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.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)