AS TO THE ADMISSIBILITY OF

Application No. 26756/95
by Kazimierz NOWOJSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 29 November 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 26 September 1993 by Kazimierz NOWOJSKI against Poland and registered on 20 March 1995 under file No. 26756/95;

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 1960, is detained on remand in Wroclaw prison.

I.

On 3 March 1993 the applicant was arrested and remanded in custody on suspicion of robbery. In the course of initial investigations the police allegedly instructed the victim to identify the applicant as a culprit at a subsequent identification parade. Thereafter, an officially assigned lawyer was appointed as the applicant's defence counsel.

On 31 May 1993 the Public Prosecutor transmitted a bill of indictment to the Wroclaw Regional Court (S*d Wojewódzki).

On 23 January and 16 February 1994 the applicant complained to the Ombudsman (Rzecznik Praw Obywatelskich) about the manner in which the investigations were conducted. He claimed that he was innocent and that his defence rights were breached.

On 28 February 1994 the applicant complained to the Court that

the police had shown him to the victim and instructed him to identify the applicant as a culprit at the identification parade.

On 12 August 1994 the applicant filed a civil action with the Wroclaw Regional Court, claiming compensation for damage to his health due to the alleged insufficient medical treatment in prison.

On 9 November 1994 the court proceedings in the criminal case were commenced.

On 3 January 1995 the Wroclaw Regional Court dismissed the applicant's challenge of the judges in the criminal case as there was no indication of lack of impartiality on their part. The Court considered that the fact that the civil proceedings were pending before the same Court did not suffice to establish that the judges in the criminal case lacked impartiality.

On 30 March 1995 the Wroclaw Regional Court refused to entertain the applicant's repeated challenge of the judges as the alleged grounds of the Court's lack of impartiality had been known to the applicant even before the proceedings in the criminal case commenced.

The case is currently pending.

II.

On 30 August 1993 the applicant had an accident in prison. He badly sprained his left knee.

On 30 September 1993 the Wroclaw Regional Court refused to release the applicant, considering that there was sufficient evidence in the case-file that he had committed the offence in question. His health condition did not necessitate treatment in a civil hospital. He could be treated by the prison medical services, as certified by the medical panel of the Wroclaw prison hospital.

On 2 January 1995 the Wroclaw Regional Court requested that an expert opinion be prepared in order to establish whether the applicant's detention was compatible with his condition and whether the applicant's health prevented him from attendance during the criminal proceedings.

On 10 January 1995 the applicant was examined by the forensic specialist of the Wroclaw Medical Academy.

On 14 January 1994 the applicant complained to the Wroclaw Regional Court about his continued detention, despite his bad health.

On 23 January 1995 a medical expert opinion by a forensic specialist was submitted to the Wroclaw Regional Court for the purpose of deciding whether the applicant's detention was compatible with his health. It stated that the applicant needed regular psychiatric counselling. No need of orthopaedic treatment was established. The applicant suffered from partial atrophy of the thigh muscle, due to the past trauma and to his refusal to cooperate with the physicians.

On 24 February 1995 the applicant complained to the prison governor about insufficient medical care. He alleged that the medical opinion of 23 January 1995 was inaccurate.

In a letter of 27 March 1995 the prison governor replied that the results of an internal enquiry had not confirmed the applicant's allegations. The medical panel at the prison hospital had clearly stated that the nature and severity of the applicant's affliction allowed for treatment in the prison hospital. He could also undergo an operation if he consented to this. The detention did not entail any danger to his life.

On 11 April 1995 the medical expert opinion was prepared for the purposes of the civil proceedings. It stated that the applicant complained of pain in his left knee and that his movements were limited. After his accident on 30 August 1993 a plaster cast was put on his leg. On 1 September 1993 he took the cast off and refused to be examined by a surgeon. He was subsequently examined on 6, 22, 24 and 27 September 1993. It was established that he suffered from an infection of the knee-joint. He refused to undergo treatment in the prison hospital. The medical examinations took place on 4 and 26 October 1993. On the latter date a plaster cast was again put on the leg. The applicant took off the plaster cast on 9 November 1993. He was examined on 9 and 12 November 1993, but refused to be examined by an orthopaedist. In January and February 1994 the infection of the joint had subsided. As a result of the infection, a deterioration of the meniscus was diagnosed in February 1994. In May 1994 the applicant was examined in the Central Prison Hospital in Warsaw and rehabilitation was recommended. The applicant refused to cooperate as he wished to have an operation instead. In June 1994 an abscess near the joint was diagnosed, probably as a result of a self-inflicted infection. The onset of atrophy of the muscles of the left thigh was also diagnosed. The applicant was examined several times in July, August and September 1994. Rehabilitation was strongly recommended by a specialist in orthopaedic surgery. Apparently the applicant refused to cooperate. The expert concluded that the trauma had not been treated in the manner which is normal for similar cases, i.e by evacuation of the fluid accumulated within the joint immediately after his accident, as the applicant had refused to give his consent. The applicant's attitude, and in particular his refusal to cooperate with the physicians, which manifested itself inter alia in the fact that on numerous occasions he had refused to take medication and had twice taken the plaster cast off, probably stemmed from his wish to be treated in a civil hospital. The operation of the deteriorated meniscus could easily have been carried out by the prison medical services, but only on condition that the applicant gave his consent.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the criminal proceedings against him are unfair in that the police instructed the victim to identify him as a culprit before the identification parade; that during the investigation the Public Prosecutor did not allow him to question a witness to the robbery; that he was not arrested until four months after the facts, having been questioned by the police twice within this period, which indicates that he is innocent. He further submits that on the critical day he had his hand in a plaster cast and was thus unable to commit the alleged crime. He complains of the assessment of the evidence made by the Public Prosecutor and the court.

The applicant further complains that he is not receiving proper medical care in prison. He submits that his health is rapidly deteriorating.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention of the unfairness of the criminal proceedings against him.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads:

> "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..."

The Commission recalls that it can only assess the fairness of

criminal proceedings when it is able to consider them in their entirety (see No. 16156/90, Dec. 7.6.90, unpublished). Until the proceedings have terminated, it is not possible to determine whether Article 6 (Art. 6) has been complied with. In the present case the criminal proceedings are still pending. This complaint is therefore premature.

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

2. The applicant further complains that he is not receiving proper medical care in prison. He submits that his health is rapidly deteriorating.

The Commission has examined this complaint under Article 3 (Art. 3) of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that, according to the case-law of the Convention organs, lack of medical treatment in prison may raise an issue under Article 3 (Art. 3) of the Convention. The factors to be considered are the seriousness of the applicant's condition, the quality of the medical care he receives in prison and whether the applicant's state of health is compatible with detention. The State has no obligation under Article 3 (Art. 3) of the Convention to release a detainee or to transfer him to the civil hospital, even when he has a disease which is particularly difficult to treat (Chartier v. Italy, Comm. Report. 8.12.82, D.R. 33 p. 41). The State is under an obligation to maintain a continuous review of the detention arrangements employed with a view to ensuring the health and well-being of all prisoners, having due respect for the ordinary and reasonable requirements of imprisonment (Bonnechaux v. Switzerland, Comm. Report 5.12.79, D.R. 18 p. 100).

In the present case, the Commission considers that the applicant's condition does not appear to be so severe as to necessitate specialised treatment in any particular civil hospital. The applicant's condition was subject to scrupulous monitoring by the prison medical services, as he underwent many examinations by general practitioners and also by specialists in orthopaedic surgery. The treatment available in prison medical services was offered to the applicant on numerous occasions and he repeatedly refused to give his consent. The medical services took him to the Central Prison Hospital in Warsaw for further examination. There is nothing in the medical certificates submitted by the applicant to support his submisson that the only way in which he could be cured is by an operation in a civil hospital. Moreover, the applicant's condition has apparently deteriorated as he repeatedly refused to undergo the rehabilitation treatment offered to him and consistently disregarded various medical recommendations. Furthermore, regard must be had to the fact that it appears from the circumstances of the case, as certified by the medical expert opinion, that the applicant has probably himself acted in such a way as to cause inflammation of his sprained knee.

The Commission concludes that the treatment complained of does not attain the threshold of inhuman or degrading treatment within the meaning of Article 3 (Art. 3) of the Convention as established in the case-law of the European Court of Human Rights (cf. Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1979, Series A, no. 25, p. 56, para. 162). It follows that this complaint 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)