AS TO THE ADMISSIBILITY OF

Application No. 25395/94
by Stanislaw REMUSZKO
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 30 November 1994, the following members being present:

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

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 27 June 1994 by Mr. Stanislaw Remuszko against Poland and registered on 7 October 1994 under file No. 25395/94;

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

The applicant, a Polish citizen born in 1948, is a journalist residing in Warsaw.

On 12 January 1993 the applicant requested the Minister of Internal Affairs to issue a certificate that the applicant had never been an informant of the communist secret police.

On 26 January 1993 the Ministry informed the applicant that such a certificate could only be issued on the condition that the applicant indicated a specific purpose for which such certificate might serve.

On 9 March 1993 the applicant stated that he needed the certificate as he was a candidate to the local municipal council and the certificate would enhance his prospects of election.

On 24 March 1993 the Ministry informed the applicant that his request could not be granted as he had not shown that he had any legal interest in having the certificate issued. Upon the applicant's enquiry the Ministry informed him on 16 April 1993 that the applicable regulations were in the Labour Code which obliged an employer to issue a certificate of employment upon termination of the employment

contract.

On 27 April 1993 the applicant pointed out in a letter to the Minister that he had not requested a certificate about employment. On the contrary, he wished that the Minister issued an certificate that he had never been employed by the Ministry.

On 13 May 1993 the Ministry advised the applicant that there was no legal obligation for any employer to issue a certificate that person had not been employed by him. Thus, no certificate would be issued as the reasons given by the applicant were insufficient.

On 26 July 1993 the applicant requested the Minister to issue the refusal in the form of an administrative decision as provided for by law.

On 31 August 1993 the Minister issued an interim decision to refuse the required certificate as the applicant's request did not comply with the applicable provisions of the Code of the Administrative Procedure.

On 9 September 1993 the applicant appealed against this decision to the same Minister, claiming that the Minister had previously issued such a certificate to a high official. The applicant pointed out that the refusal should be issued as a proper final administrative decision on the merits.

On 20 October 1993 the Minister confirmed his previous decision and also informed the applicant that no further appeal to the Supreme Administrative Court was possible.

The applicant's further appeal was rejected on 18 January 1994 by the Supreme Administrative Court which found that the Minister had acted in conformity with the law. Moreover, the appeal to the Court was not possible as it could only deal with appeals against final administrative decisions on the merits.

COMPLAINTS

The applicant complains under Article 6 of the Convention that he was denied access to court in that the Minister of Internal Affairs issued an interim decision against which there was no appeal to the Supreme Administrative Court. He submits that the refusal to issue the requested certificate was in breach of the principle of equality before the law and non-discrimination as the Minister had previously issued such a certificate to another high official.

Under Article 13 of the Convention he complains that he had no effective remedy to complain about this breach as it was the Minister of Internal Affairs who decided in first and second instance.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention that he was denied access to court through the fact that an interim decision was issued against which there was no appeal to the Supreme Administrative Court.

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 within a reasonable time by an independent and impartial tribunal established by law."

The Commission recalls that Article 6 (Art. 6) 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 have a certificate issued to the effect that he had never been an informant of the communist secret police. It is true that his right to enjoy a good reputation may constitute a "civil right" within the meaning of Article 6 (Art. 6) of the Convention. However, even though the certificate requested by the applicant could be conceived as a measure aimed at a protection of his good reputation, what was at issue was not his reputation as such, but his claim to receive a certificate. It does not transpire from the applicant's submissions that the domestic law provides for a right to receive such a certificate from the Minister of Internal Affairs, nor that there are specific provisions indicating the persons entitled to obtain such a certificate and the applicable procedures. Thus the proceedings at issue did not concern 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.

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

2. Under Article 13 (Art. 13) of the Convention the applicant complains that he had no effective remedy at his disposal to complain about the above as it was the Minister of Internal Affairs who in the administrative proceedings decided in first and second instance. However, the Commission has found that Article 6 (Art. 6) of the Convention is inapplicable to the proceedings at issue. It follows that the complaint under Article 13 (Art. 13) of the Convention is also incompatible ratione materiae with the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)