AS TO THE ADMISSIBILITY OF

Application No. 29806/96
by Ryszard RYBICKI
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 27 June 1995 by Ryszard RYBICKI against Poland and registered on 15 January 1996 under file No. 29806/96;

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 1949, resides in Ustrzyki Dolne.

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

On 8 August 1993 the applicant, who was unemployed at this time, requested the Krosno Regional Labour Office (Rejonowy Urz*d Pracy) to grant a permission to employ a Ukrainian citizen N.B. as a driver and unskilled worker in the private company which the applicant intended to found. He submitted that he would not be able to employ a Polish citizen as the labour costs of the latter would render the company economically unviable, whereas the salary to be paid to the Ukrainian citizen could be significantly lower.

On 31 August 1993 the Krosno Regional Labour Office refused to grant the permit on the grounds that there were twenty-four unemployed Polish citizens having the qualifications required by the applicant registered with the Labour Office in Ustrzyki. In view thereof, the employment of a foreigner would be incompatible with the necessity to protect the local labour market, in particular as the local

municipality was particularly affected by the structural unemployment.

The applicant lodged an appeal with the Warsaw Labour Office (Krajowy Urz*d Pracy) submitting that the refusal to employ N.B. would make it impossible for him to start his own business as he would be unable to pay the salary and the social security of a Polish employee.

On 11 October 1993 the Warsaw Labour Office upheld the decision of the Regional Labour Office, considering that it was in conformity with the law.

On 20 October 1993 the Krosno Municipal Appeals Board (Kolegium Odwolawcze przy Sejmiku Samorz*dowym) dismissed the applicant's request to set aside the decision of the municipal authorities of 1986 by which the applicant had been obliged to pay the municipal tax, considering that the decision was lawful and had been duly served on the applicant.

The applicant filed an appeal with the Supreme Administrative Court (Naczelny S*d Administracyjny). He submitted that the refusal to employ N.B. would make it impossible for him to start his own business as he would be unable to pay the salary and the social security of a Polish employee.

On 5 May 1994 the Supreme Administrative Court dismissed the applicant's appeal against the decision of the Krosno Municipal Appeals Board of 20 October 1993, finding that the decision concerned was lawful. Subsequently the Minister of Justice on 30 November 1994, 10 March and 23 October 1995 refused to lodge an extraordinary appeal with the Supreme Court against this decision. The Ombudsman likewise refused to file such an appeal on 25 July 1994, 9 January, 3 February and 5 May 1995.

On 6 December 1994 the Supreme Administrative Court dismissed the applicant's appeal against the decision of the Warsaw Labour Office of 11 October 1993. The Court first observed that its scope of jurisdiction was limited to the examination of the lawfulness of administrative decisions. The Court noted that under Article 50 of the Law on Employment the local labour offices, when deciding on granting a permission to employ a foreigner, had to consider how such permission would affect the situation on the local labour market. They further had to take into consideration the relevant opinion of the local Employment Board. In the present case that opinion was negative, there were twenty-four registered unemployed persons in Ustrzyki and the municipality was particularly affected by the structural unemployment. In view thereof, the refusal was in compliance with the law. The Court further observed that the granting of the permit was not obligatory and was within the discretionary power of both authorities to grant or to refuse it, regard being had not only to the applicant's arguments but also to all relevant aspects of the case, including the public interest. The considerations of public interest argued against granting the permission to employ an unskilled foreign citizen at the time of widespread unemployment. The authorities, in their examination of the case, were not arbitrary and duly considered all circumstances of relevance.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that the refusal to employ the Ukrainian citizen amounted to a breach of his right to a fair hearing in that it rendered his enterprise economically unviable as he could not afford to pay higher wages and social security to a Polish employee.

The applicant complains under Article 6 para. 1 of the Convention about the outcome of the proceedings which ended with the

judgment of the Supreme Administrative Court of 5 May 1994, and about subsequent refusals of the Minister of Justice and the Ombudsman to lodge an extraordinary appeal on his behalf.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the refusal to employ the Ukrainian citizen amounted to a breach of his right to a fair hearing.

Article 6 para. 1 (Art. 6-1) in its relevant part reads:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing..."

The Commission must ascertain whether Article 6 para. 1 (Art. 6-1) of the Convention is applicable in the present case and whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. In order to fall within the scope of Article 6 (Art. 6), the dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Finally, the result of the proceedings must be directly decisive for the right in question (Eur. Court HR, Kerojärvi v. Finland judgment of 19 July 1995, Series A no. 322, p. 12, para. 32).

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 permission to employ a Ukrainian citizen in his private company. Under Article 50 of the Law on Employment the competent authorities had to consider how such a permission, if granted, would affect the situation on the local labour market and to take into account the relevant opinion of the local Employment Board. In the applicant's case the authorities considered that the permission could not be granted in view of the significant unemployment in his municipality and the opinion of the Board was unfavourable. When deciding on granting or refusing the permission the authorities exercised their administrative discretion and were under no obligation to issue a permission. 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 to the proceedings concerned.

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.

2. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention about the outcome of the proceedings which ended with the judgment of the Supreme Administrative Court of 5 May 1994, and about subsequent refusals of the Minister of Justice and the Ombudsman to lodge an extraordinary appeal on his behalf.

As regards the proceedings before the Supreme Administrative Court, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6 (Art. 6) of the Convention as the judgment complained of was pronounced on 5 May 1994, i.e. more than six months before the date on which the application was introduced. The applicant has not therefore lodged his application within the six months' time-limit provided for in Article 26 (Art. 26) of the Convention.

It follows that this complaint is inadmissible within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

Insofar as the applicant complains about the refusals to lodge an extraordinary appeal, the Commission observes that the right to use extraordinary legal remedies is not included among the rights and freedoms guaranteed by the Convention.

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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber