AS TO THE ADMISSIBILITY OF

Application No. 24712/94
by Stefan SALICKI
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 11 February 1994 by Stefan SALICKI against Poland and registered on 27 July 1994 under file No. 24712/94;

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 1945, lives in Miechowice, Poland. He was a mining inspector at the Regional Mining Office.

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

In May 1983 the applicant was appointed to a post in civil service as a mining engineer. In February 1993 disciplinary proceedings against the applicant, who at that time held a post of mining inspector at the Regional Mining Office in Sosnowiec, were instituted on the basis of the Civil Service Act.

On 3 March 1993 the President of the Higher Mining Office (Prezes Wyzszego Urz*du Górniczego) ordered the applicant's disciplinary suspension until the termination of the disciplinary proceedings.

On 11 March 1993 the Disciplinary Commission for civil servants at the regional mining services (Komisja Dyscyplinarna I instancji dla

urz*dników mianowanych zatrudnionych w okr*gowych urz*dach górniczych) found that during the night of 2 December 1992 the applicant had disturbed public order at a mine under his supervision, being in the state of intoxication, and by an unjustified use of tear gas spray in a service car in which he had been being driven home. The Commission decided that the disciplinary penalty of dismissal from service for a violation of discipline should be imposed on him. The applicant filed an appeal, submitting that the findings made in the proceedings were entirely untrue.

On 28 April 1993 the Higher Disciplinary Commission at the Higher Mining Office (Komisja Dyscyplinarna II instancji dla mianowanych okr*gowych urz*dów górniczych przy Wyzszym Urz*dzie Górniczym) confirmed the decision of 11 March 1993.

By decision of 4 May 1993 the President of the Higher Mining Office in Katowice dismissed the applicant from his post, considering that under Section 14 para. 1 of the Civil Service Act the disciplinary penalty of dismissal from civil service imposed in the disciplinary proceedings entailed termination of his employment.

The applicant lodged an appeal against the decisions on his disciplinary suspension of 3 March 1993 and against his dismissal of 4 May 1993.

On 15 July 1993 the Supreme Administrative Court (Naczelny S*d Administracyjny) dismissed the applicant's appeal. The Court considered that it had no jurisdiction to examine the applicant's appeal insofar as it concerned the decision of 3 March 1993, the disciplinary proceedings being excluded by law from its scope of jurisdiction. With regard to the decision of dismissal, the Court noted that it was bound by the facts established in the disciplinary proceedings and that it could only assess the matter on points of law. The Court observed that the Civil Service Act envisaged that a civil servant was to be dismissed if a disciplinary penalty of dismissal from service had been imposed in the disciplinary proceedings. The Court concluded that in view of the outcome of the disciplinary proceedings, the decision on the applicant's dismissal was in accordance with law.

By decision of 24 August 1994 the Minister of Justice dismissed the applicant's request to lodge an extraordinary appeal against the judgment of the Supreme Administrative Court.

COMPLAINTS

The applicant complains under Articles 6 and 9 of the Convention that his case was not dealt with fairly in that the findings of the disciplinary commissions were incorrect as he had not disturbed the public order but had only defended himself against an unjustified assault. He submits that the Supreme Administrative Court did not examine his complaint that the disciplinary proceedings had been instituted after the expiry of the one month time-limit from the events concerned.

The applicant further complains that the Ministry of Justice dismissed his request to lodge an extraordinary appeal on his behalf.

THE LAW

The applicant complains under Articles 6 and 9 (Art. 6, 9) of the Convention about the alleged unfairness and outcome of the proceedings. The Commission has examined this complaint under Article 6 para. 1 (Art. 6-1) which in its relevant part 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."

Insofar as the applicant's complaint relates to events before 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". It follows that this part of the application is outside the competence ratione temporis of the Convention and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

As regards the events after that date, the Commission first 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 legal conditions of the applicant's employment were governed by the Civil Service Act. In the domestic proceedings the applicant contested the lawfulness of the decision suspending him from the exercise of his function. He further challenged the accuracy of the findings made in the disciplinary proceedings and of the decision to terminate his employment as a civil servant taken in accordance with Article 14 para. 1 of the Civil Service Act. The Commission considers that the proceedings concerned clearly related to the termination of the applicant's career in the civil service. Therefore they did not concern a "civil" right within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. It follows that this provision is not applicable to the proceedings at issue.

For these reasons 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.

Insofar as the applicant complains about the Minister of Justice's refusal to lodge an extraordinary appeal with the Supreme Court on his behalf, the Commission observes that the right to use extraordinary legal remedies, such as an extraordinary appeal, is not as such among the rights guaranteed by the Convention. It follows that this part of the application is also 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	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber