AS TO THE ADMISSIBILITY OF

Application No. 25085/94
by Grzegorz SAWICKI
against Poland

The European Commission of Human Rights sitting in private on 6 July 1995, the following members being present:

MM. C.A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN

Mr. M. de SALVIA, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 December 1993 by Grzegorz Sawicki against Poland and registered on 6 September 1994 under file No. 25085/94;

Having regard to the reports 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 1954, is a carpenter currently serving a prison sentence in Fordon prison in Poland.

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

1. Particular circumstances of the case

On 20 May 1993 the Wloclawek District Court (S*d Rejonowy)

convicted the applicant of attempted theft and sentenced him to three years' imprisonment and a fine of three million zlotys with 30 days' imprisonment in default.

The applicant lodged an appeal against this decision. He complained that the District Court had refused to hear one witness, who had been heard in the course of the investigation, and to inspect the scene of the crime. He also complained about the assessment of evidence by the District Court.

On 18 November 1993 the Wloclawek Regional Court (S*d Wojewódzki) dismissed the appeal. The Court considered that the refusal to hear the witness was justified as he had been heard in the course of the investigation. He had stated that he was not able to see the person concerned in the act of committing the offence and consequently was not able to identify the applicant. There were other witnesses who had recognised the applicant. The Court considered that a visit to the scene of the offence would be of no significance as the District Court knew it ex officio. There was no indication that the District Court was arbitrary in assessment of evidence.

On 12 April 1994 the Minister of Justice refused leave for an extraordinary appeal.

Letters which the Commission's Secretariat sent to the applicant on 24 January 1994, 24 March 1994 and 25 July 1994 were allegedly stopped by the prison authorities, opened in his absence and handed to him with delays of approximately twenty days. The prison authorities posted the applicant's letters to the Commission only upon his insistent requests.

2. Relevant domestic law

According to Article 30 para. 2 of the Rules of Execution of Prison Sentences, the prisoner may correspond with foreign institutions and organisations only with the permission of a prison governor.

According to Article 31 para. 1 the correspondence of a prisoner shall be subjected to censorship by the prison governor, with the exception of letters to and from legislative and administrative authorities, the judiciary, the police and other state authorities.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the District Court refused to hear one witness who had been heard during the investigation and to take evidence on the spot. He also complains of the assessment of evidence by this Court.

The applicant further complains that three letters from the Secretariat of the Commission were stopped, opened in his absence, read and handed to him with delays of approximately twenty days. He alleges that on several occasions the prison authorities first refused to post his letters to the Commission and then only did so on his insistence.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 December 1993 and registered on 6 September 1994.

On 30 November 1994 the Commission decided to communicate the application to the Polish Government who were invited to submit their observations on its admissibility and merits before 21 February 1995. At the Government's requests, dated 14 February, 16 March, 21 March and 13 April 1995, the time-limit for the submission of the observations was subsequently extended four times, until 10 March, 31 March, 10 April and 30 April 1995, respectively.

By letter of 27 April 1995 the Government were informed that the application was being considered for inclusion in the list of cases for examination by the Commission at its June session.

THE LAW

1. The applicant complains that three letters from the Secretariat of the Commission were stopped, opened in his absence, read and handed to him with delays of approximately twenty days. He alleges that on several occasions the prison authorities refused to post his letters to the Commission and did so only on his insistence.

The Commission has examined these complaints under Article 8 (Art. 8) and Article 25 para. 1 (Art. 25-1) of the Convention.

Article 8 (Art. 8) of the Convention, insofar as relevant, provides:

> "1. Everyone has the right to respect for his ... correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 25 para. 1 (Art. 25-1) of the Convention, insofar as relevant, provides:

> "1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention... Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

The Commission recalls that the application was communicated to the Polish Government, who have been invited to submit observations on their admissibility and merits. The time-limit for the submission of such observations was extended, at the Government's request, four times, the last time until 30 April 1995. No observations have been submitted within the time-limit.

As regards the exhaustion of domestic remedies, it is the normal practice of the Commission, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations. The Commission considers that the same principle should be applied where, as in the present case, the respondent Government have not submitted any observations at all (see No. 22947/93, Dec. 11.10.93, unpublished). Insofar as the complaint raises issues under Article 25 para. 1 (Art. 25-1) of the Convention, the Commission recalls that the general rules of admissibility, including the provisions concerning the exhaustion of domestic remedies, are not applicable with regard to the complaints which raise a question under Article 25 para. 1 (Art. 25-1) of the Convention (see No. 3591/68, Dec. 5.2.70, Collection 31, p. 37).

It follows that the complaint under Article 8 (Art. 8) of the Convention cannot be rejected under Article 26 (Art. 26) of the Convention for non-exhaustion of domestic remedies.

The Commission further recalls the Convention organs' case-law, according to which the parties must be invited to participate in the examination of the facts by the Commission, though such an examination cannot be hindered by the manner in which the parties in fact participate (see No. 8007/77, Dec.10.7.78, D.R.13 p. 85).

Having examined the complaint under Article 8 (Art. 8), the Commission finds that it raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This complaint cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention , and no other ground for declaring it inadmissible has been established.

2. The Commission further considers that the question whether the applicant's right under Article 25 (Art. 25) of the Convention to exercise his right of petition has been interfered with requires further examination by the Commission.

3. The applicant further complains under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention that the criminal proceedings were unfair in that the Wloclawek District Court refused to hear one witness, who had been heard in the course of the investigations, and wrongly assessed evidence before it. The Court also refused to take evidence on the spot.

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

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing."

Article 6 para. 3 (Art. 6-3) of the Convention, insofar as relevant, provides:

> "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 recalls that Article 6 (Art. 6) of the Convention does not grant the accused an unlimited right to secure the appearance of witnesses in court. Furthermore, it is in the trial court's discretion to refuse to take evidence which is considered irrelevant or unobtainable (see. No. 8417/78, Dec. 4.5.79, D.R. 16 p. 200 and Eur. Court H.R.; Engel and Others judgment of 8 June 1976, Series A no. 22, pp. 38-39, para. 91). Moreover, according to the Convention organs' case-law, it is primarily for the national courts to assess the evidence before them. The Convention organs' task is to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see Eur. Court H.R., Asch judgment of 26 April 1991, Series A, No. 203, p. 10, para. 26).

In the present case, the District Court refused to hear the witness concerned as he had already been heard during the investigations. The Court considered his evidence irrelevant as he had stated that he had not recognised the person concerned while he was committing an offence. Moreover, the Court refused to take evidence on the spot, all relevant circumstances being known to the Court. There are no elements which would indicate that the District Court went beyond its discretion when appraising the evidence in the circumstances of the present case.

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 ADMISSIBLE, without prejudging the merits of the case, the complaints under Article 8 (Art. 8) of the Convention;

DECLARES INADMISSIBLE the remainder of the application;

DECIDES TO PURSUE the examination of whether the applicant's right under Article 25 (Art. 25) of the Convention was interfered with.

Deputy Secretary to the Commission — President of the Commission

(M. de SALVIA) — (C.A. NØRGAARD)