AS TO THE ADMISSIBILITY OF

Application No. 26619/95
by Czesław STACHOWIAK
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
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 10 September 1992 by Czesław Stachowiak against Poland and registered on 3 March 1995 under file No. 26619/95;

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 applicant, a Polish citizen born in 1947, is serving a prison sentence in Siedlce prison.

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

From 25 November 1993 until 10 May 1993 the applicant was serving his prison sentence in Łódź prison. During this period, for an unspecified time, he was hospitalised in the internal medicine department of the hospital of Łódź prison.

From 10 May 1994 to 20 May 1994 the applicant was taken to Bydgoszcz prison, apparently for certain medical examinations.

On 21 May 1994, upon arrival at Czarne prison, he was admitted to the internal medicine department of the prison hospital where his condition, caused by diabetes, was stabilised. He remained in the hospital until 5 July 1994. His medical records allegedly stated that his diabetes had been cured by the time that he was discharged. On 13 July 1994 he was again transferred to Wierzchowo prison. Once he arrived there, he was admitted to the medical ward of that prison. In view of the fact that a medical examination had shown that he needed further treatment, it was decided that he should be transferred to a prison with appropriate medical facilities. The applicant himself insistently demanded to be transferred to another prison in which special conditions for prisoners with diabetes would be available.

Apparently on 22 July 1994 the Koszalin Chief Regional Penitentiary Physician decided that the applicant's condition did not warrant his transfer as a diet for diabetics could also be provided in Wierzchowo prison.

On 25 July 1994 the applicant appealed against the decision of the Chief Regional Penitentiary Physician. He submitted that he had been suffering from diabetes for four years. In August 1992 he had been transferred to Wronki prison. In view of the fact that there was no special care for diabetics available in this prison, on 18 November 1993 he had been, upon his request, transferred to Łódź prison. His subsequent request for a further transfer to Nowogard prison, closer to his home, had been refused. He emphasised that he was not receiving appropriate medical care in Wierzchowo prison.

At an unspecified later date the applicant was transferred to Czarne prison. In this prison the level of sugar in his blood was regularly tested. On 10 August 1994 he requested, in view of his liver problems, to be given white bread and food compatible with his diabetes.

On 16 August 1994 he requested permission to have an electric stove in his cell so that he could cook himself appropriate food.

In a letter of 12 August 1994 the Deputy Governor of Łódź District Detention Centre informed the applicant that his complaints concerning the conditions of his detention, and in particular the alleged negligence of the prison authorities as regards examination of his various complaints, were unfounded.

On 6 September 1994 the applicant complained to the Ombudsman's office about inadequate medical care he was receiving in prison.

In a letter of 25 October 1994 the office of the Ombudsman informed the applicant that he would be examined by a physician appointed by the Ombudsman's office. At an unspecified later date a physician appointed by the office came to the prison, examined the applicant and studied his medical records.

In a letter to the physician of the Czarne prison of 24 November 1994 the applicant stated that he was suffering from hypertension and demanded appropriate medical care which had allegedly been refused him.

On an unspecified later date the applicant complained to the Governor of Czarne prison about the fact that the prison authorities were not complying with his various requests concerning the conditions of his detention. He further requested to be transferred to Siedlce prison. In a letter to the applicant of 2 November 1994 the Governor of Siedlce prison agreed to the applicant's admission to this prison.

On 1 December 1994 the applicant complained to the Governor of Czarne prison that his requests for a transfer to Siedlce prison were not dealt with speedily.

In a letter to the applicant of 14 December 1994 the office of the Ombudsman stated that he had been examined by a physician from the general medical health care system who had established that he was suffering from diabetes and hypertension. It was further stated that the diabetes was stabilised. The physician had stated that he had sufficient basis in the applicant's medical records to determine that the prison health services had offered him proper medical care. Therefore, the Ombudsman's office had no reason to take any further action.

Throughout his detention, the applicant complained to various authorities about the medical care afforded to him in prison.

Relevant domestic law

Article 23 of the Rules of Execution of Prison Sentences reads:

< Translation >

"A prisoner shall receive free medical treatment and pharmaceuticals ... from the prison medical services or, if need be, from the public medical services."

< Original >

"Skazanemu zapewnia się bezpłatną opiekę lekarską świadczoną przez służbę zdrowia zakładów karnych, a w razie potrzeby także przez zakłady społeczne służby zdrowia, oraz bezpłatne leki (...)."

COMPLAINT

The applicant complains that he is not receiving appropriate medical care in prison.

THE LAW

The applicant complains that he is not receiving appropriate medical care in prison. The Commission has examined this complaint under Article 3 of the Convention which reads:

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

The Commission first recalls that according to the case-law of the Convention organs, ill-treatment must attain a minimum level of severity, if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is, in the nature of things, relative, and will depend on all the circumstances of the case (Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1979, Series A no. 25, p. 65, para. 162).

The Commission further recalls that lack of medical treatment in prison may raise an issue under Article 3 of the Convention. The factors to be considered are the seriousness of the applicant's condition, the quality of the medical care he received in prison and whether the applicant's state of health is compatible with detention. The State has no obligation under Article 3 of the Convention to release a detainee or to transfer him to a 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). However, the Commission recalls the State's 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 regard to the ordinary and reasonable requirements of imprisonment (Bonnechaux v. Switzerland, Comm. Report 5.12.79, D.R. 18, p. 100; No. 8317/78 McFeeley and others v. United Kingdom, Dec. 15.5.80, D.R. 20, pp. 44, 81; No. 21915/93, Dec. 12.1.95, D.R. 80-A, p. 108).

The Commission first observes that it does not appear that the applicant's condition was such as to be incompatible with his detention. Whereas it was true that he was suffering from mild hypertension, his condition was monitored by the prison medical services, and, as a result of treatment which he received, had become stabilised. The Commission notes in this respect that the applicant's condition was due to ailments which were of a long-lasting nature. There is no indication that the applicant's ailments were caused by his detention (Chartier v. Italy, Comm. Report, op. cit.).

The Commission further observes that it does not transpire from the documents submitted that the applicant's condition deteriorated during his detention and as a result of either the conditions of his detention or negligence on the part of the prison medical services. Likewise, there is no indication that there was any deterioration of his condition, resulting from inadequacy of available medical care. The applicant does not allege that the medical services failed to make the tests which must be routinely performed on persons with diabetes, nor that he did not receive proper medication. Moreover, there is no indication that the authorities refused medical care to the applicant. On the contrary, his complaints about his poor health were followed by frequent medical examinations and consultations. Thus, from 10 to 20 May 1994 he underwent certain medical examinations in the hospital of Bydgoszcz prison. On 21 May 1994, after his transfer to Czarne prison, he was admitted to the internal medicine department of the prison hospital where his condition, caused by diabetes, was stabilised. Subsequently, following his complaint to the Ombudsman, a physician from the public medical care system was assigned to investigate the applicant's complaints. He examined the applicant and studied his medical records and found no irregularities in the manner in which the applicant had been medically treated. Thus, the Commission concludes that it has not been established that the applicant's condition deteriorated because the authorities failed to afford him adequate medical care.

The Commission therefore considers that the treatment complained of did not reach the threshold of severity required to fall within the ambit of Article 3 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber