AS TO THE ADMISSIBILITY OF

Application No. 29802/96
by Edward STROJK
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 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

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 July 1995 by Edward STROJK against Poland and registered on 15 January 1996 under file No. 29802/96;

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 1943, is a retired professional army officer, residing in Slupsk.

Particular circumstances of the case

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

In 1989 the applicant assaulted his wife with a knife. Subsequently criminal proceedings were instituted against him. Later the charges against the applicant were dropped as it was established after a psychiatrical observation that he was not criminally responsible. In February 1989 the Pomorski Military Court (S*d Pomorskiego Okr*gu Wojskowego) in Bydgoszcz committed the applicant to a mental hospital. In June 1989 the Supreme Court (S*d Najwyzszy) upheld this decision.

On 6 September 1991 the Supreme Court considered an extraordinary appeal filed by the President of the Supreme Court's Military Chamber against the decisions of 1990 and 1991 relating to the applicant's

internment, quashed these decisions and ordered that the case be reconsidered by the Pomorski Military Court.

On 16 September 1992 the Gdansk Regional Court (S*d Wojewódzki) decided to legally incapacitate the applicant on medical grounds. His sister was appointed his legal guardian.

On 11 August 1993, 11 March 1994, 22 April 1994 and 25 November 1994 the Pomorski Military Court decided that the applicant should remain in detention. The Court referred to medical opinions issued by the hospital physicians or to letters from the hospital and concluded that these documents constituted a sufficient and relevant basis for the conclusion that the applicant's health warranted his continued detention as his release would entail a serious threat to public order.

In a letter of 25 August 1995 the Director of the Starogard psychiatric hospital informed the court that the applicant's health did not warrant his further internment and that he had ceased to constitute a threat to public order.

On 15 September 1995 the Pomorski Military Court decided to order an expert opinion of two psychiatrists from the Starogard hospital as to whether the applicant's health still necessitated his detention. The Court, in doing so, complied with the Public Prosecutor's request, indicating that the medical documents previously submitted to the Court had not appeared to be sufficiently detailed to serve as a basis for the decision on internment.

On 15 December 1995 the Pomorski Military Court ordered discharge of the applicant from the hospital. In taking this decision the Court relied on a letter of 25 August 1995 and on an expert opinion prepared by two psychiatrists who had stated that the applicant's health had considerably improved, that his conduct was reasonable and allowed for satisfactory emotional and intellectual contact with other people and that the applicant was able to make a realistic assessment of his situation. The Court concluded that his further psychiatric treatment was no longer called for and that he had ceased to constitute a threat to public order. In view thereof the Court found that the applicant's further internment was unnecessary.

The applicant's sister, acting as his legal guardian, lodged an appeal against this decision.

On 7 March 1996 the Pomorski Military Court dismissed the appeal. The Court considered that the impugned decision was based on an opinion put forward by the director of the hospital where the applicant was interned and on the expert report. The letter and the report corresponded to each other, as they both indicated clearly that the applicant's health had significantly improved and did not necessitate further hospital treatment. These opinions were concordant and did not contain any flaws in their reasoning. The lower Court had correctly assessed the evidence and had taken a decision which was in conformity with law.

Relevant domestic law

Section 99 of the Polish Criminal Code provides that if it has been established that a person has committed an offence in a state of mental disorder [excluding his criminal responsibility], and his remaining at liberty would entail a serious danger to public order, the court shall commit him to a mental hospital or other appropriate institution. Section 101 provides that the court shall release the offender if his or her further internment is no longer necessary.

COMPLAINTS

The applicant complains that his committal to the mental hospital and the following medical treatment were in breach of Article 3 of the Convention.

He further complains under Article 5 para. 1 (e) of the Convention that the decisions concerning his internment were not justified as he was not mentally ill.

The applicant complains under Article 6 para. 1 of the Convention that the 1989 decision to discontinue the criminal proceedings deprived him of a possibility to be declared innocent. He further complains under Article 13 of the Convention that he had been legally incapacitated which deprived him of any chances to seek release.

THE LAW

1. Insofar as the applicant's complaints relate to events which took place 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 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 Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant complains that his psychiatric treatment amounted to a breach of Article 3 (Art. 3) of the Convention, which, insofar as relevant, reads:

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

The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) of the Convention as established in the case-law of the Convention organs (cf. Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1979, Series A, no. 25, p. 65, para. 162). Having examined the material submitted, the Commission finds no evidence that the medical treatment complained of raises any issue under this provision of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Insofar as the applicant complains under Article 13 (Art. 13) of the Convention that he did not have any effective remedy at his disposal to complain about the alleged violations of his rights, the Commission finds that no arguable claim has been made out in relation to the applicant's complaint under the provisions of the Convention (Eur. Court HR, Powell and Rayner v. United Kingdom judgment of 21 February 1990, Series A no. 172, p. 13 et seq., paras. 28 et seq.). This complaint is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further complains under Article 5 (Art. 5) of the Convention about the decisions to maintain him in psychiatric internment, taken after 30 April 1993.

Article 5 (Art. 5) of the Convention, insofar as relevant, reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants..."

Insofar as this complaint concerns the decisions of the Pomorski Military Court of 11 August 1993, 11 March 1994, 22 April 1994 and 25 November 1994, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5 (Art. 5) of the Convention as these decisions were taken 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.

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