AS TO THE ADMISSIBILITY OF

Application No. 28616/95
by Szczepan STYRANOWSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 15 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
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 24 July 1995 by Szczepan STYRANOWSKI against Poland and registered on 21 September 1995 under file No. 28616/95;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 28 October 1996 and the observations in reply submitted by the applicant on 29 November 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1923, is a retired judge residing in Olsztyn.

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

In May 1991 the applicant retired. The Social Insurance authorities calculated his retirement pension on the basis of his contributions at the level of about 45 per cent of his salary, in accordance with the relevant provisions of the Retirement Pensions Act of 1972. The applicant's pension was calculated on the basis of his actual salary upon retirement, which was equivalent to 314 per cent of an average salary.

On 1 December 1991 the Social Insurance authorities in Olsztyn issued a new decision, in accordance with the amendment of the

Retirement Pensions Act of 17 October 1991, reducing the applicant's retirement pension by 1.075,600 zlotys. This pension was calculated on the assumption, introduced by that amendment, that the applicant's income upon retirement had not exceeded a maximum level of 250 per cent of an average salary, regardless of his actual salary at that moment.

On 17 December 1991 the applicant appealed against this decision to the Olsztyn Regional Court - Labour and Social Insurance Division (S*d Wojewódzki - S*d Pracy i Ubezpieczen Spolecznych). He submitted that the 250 per cent ceiling introduced by the October 1991 amendment deprived him of a part of his retirement pension.

On 17 December 1991 the applicant also filed a compensation claim against the Social Insurance with the Olsztyn District Court (S*d Rejonowy). He complained that his retirement pension had been recalculated and reduced in accordance with generally applicable rules, i.e. disregarding the fact that his actual salary upon retirement had been equivalent to 314 per cent of an average salary. He submitted that the Social Insurance, in accepting the law which had imposed a ceiling of 250 per cent of an average salary as the highest basis on which a retirement pension could be calculated, had failed to respect its obligations towards the applicant. These obligations originated from the applicant's payment of contributions to the social security retirement pension scheme for forty-four years. No legal provisions throughout this period provided for any ceiling such as the one introduced by the October 1991 Act. Thus the action of the Social Insurance had given rise to a liability towards the applicant based on tort.

On 25 May 1992 the Warsaw Court of Appeal - Labour and Social Insurance Division (S*d Apelacyjny - S*d Pracy i Ubezpieczen Spolecznych) complied with the request submitted by all the Olsztyn Regional Court (S*d Wojewódzki) judges to have the applicant's appeal against the Social Insurance decision of 1 December 1991 examined by another court in view of the fact that the applicant had been their superior for many years. The case was accordingly transferred to the Warsaw Regional Court - Labour and Social Insurance Division. This Court held a hearing on 8 September 1992 and dismissed the applicant's appeal against the decision of 1 December 1991, considering that the impugned decision was in conformity with the relevant provisions of the Retirement Pensions Act as amended by the October 1991 Act.

Subsequently on 9 February 1993 the Social Insurance authorities issued a new decision concerning the applicant's retirement pension on the basis of certain new documents indicating that the applicant's salary upon his retirement had in fact been higher than the amount which had served as basis of the December 1991 decision. The applicant appealed against this decision, complaining again that the basis on which to recalculate his pension should not have been limited to 250 per cent of the average salary as provided for by the relevant legal provisions. On 14 May 1993 the Warsaw Regional Court - Labour and Social Insurance Division allowed the applicant's appeal as regards the period until 1 January 1992 and dismissed it insofar as it related to the period after that date, i.e. after the entry into force of the October 1991 Act. The Court considered that the 250 coefficient had been provided for in the relevant provisions of the October 1991 Act applicable after this date and that in applying these provisions to the applicant's case the Social Insurance had been acting in accordance with the law.

In the proceedings concerning the compensation claim, on 20 May 1992 the Warsaw Court of Appeal complied with the request submitted by all the Olsztyn Regional Court judges to have the compensation case examined by another court as regards any decisions to be taken by the appellate court. The Court decided that in view of the fact that the applicant had been a Deputy President of the Olsztyn Regional Court, the appeal proceedings in the case should be

transferred to the Ostrol*ka Regional Court. On 19 June 1992 the case-file reached the Ostrol*ka Regional Court.

On 26 June 1992 the Warsaw Court of Appeal complied with the request submitted by all the Olsztyn District Court judges to have the compensation case examined by another court and decided that in view of the fact that the applicant had been a Deputy President of the Olsztyn Regional Court, the case should be transferred to the Szczytno District Court.

On 29 September 1992 the Ostrol*ka Regional Court, at the request of the judges of the Szczytno District Court, decided that the case should be examined in the first instance by the Przasnysz District Court.

The first hearing, fixed for 9 November 1992, was adjourned as the Court did not receive a confirmation that the defendant Social Insurance had received the summons.

On 17 November 1992 the applicant informed the Przasnysz District Court that he maintained his claim and requested that a certain witness be heard. The Przasnysz Court requested the Olsztyn District Court to hear this witness.

The hearing fixed for 24 November 1992 was adjourned as the witness requested by the applicant failed to appear.

The date of a hearing was fixed for 30 December 1992. The applicant requested that this hearing be adjourned. The Olsztyn District Court fixed a new hearing for 14 January 1993 and heard the witness requested by the applicant on that date.

On 19 January 1993 the applicant requested that the Court rectify the minutes of the hearing held on 14 January 1993. The Court complied with this request on 15 April 1993.

On 18 May 1993 the hearing was adjourned as the defendant had not submitted the confirmation that it had received the summons.

On 17 September 1993 the applicant complained to the Przasnysz District Court about the length of the compensation proceedings and requested that the date of the next hearing be fixed. He also requested that the former Prime Minister who had been in office until June 1993 be heard as a witness to support the applicant's claim that in the past the social security contributions had been used by the State for other purposes than paying social insurance benefits.

On 20 September 1993 the applicant requested that a date of the next hearing be fixed with no delay. On the same date the presiding judge ordered that the applicant be informed that due to serious staffing difficulties the date of the hearing would be fixed later.

The next hearing was fixed for 25 January 1994. On 21 January 1994 the applicant informed the Przasnysz Court that he would be unable to attend the hearing at which his attendance was not obligatory. He maintained his claim and referred to the Constitutional Tribunal's judgment of 11 February 1992 in which the Tribunal had stated that the October 1991 amendment to the Retirement Pensions Act was incompatible with the Constitution. On 25 January 1994 the hearing was adjourned as the parties did not appear.

The next hearing was fixed for 23 September 1994. On 16 September 1994 the applicant informed the Przasnysz Court that he would be unable to attend the hearing at which his attendance was not obligatory. He maintained his claim and requested again that the former Prime Minister be heard, referring to his letter of 17 September 1993.

On 23 September 1994 the hearing was further adjourned as the Court decided to request the Social Insurance to submit the applicant's case-file. This case-file reached the Court on 27 October 1994.

On 7 December 1994 the applicant complained to the Minister of Justice about the length of the proceedings and in particular about the hearings having been adjourned on numerous occasions without justification.

In reply, in a letter of 10 January 1995 the President of the Ostrol*ka Regional Court informed the applicant that his case should be considered as being "privileged" since the hearings in his case had been fixed for 9 November 1992, 24 November 1992, 25 January 1993, 18 May 1993 and 23 September 1993. In view of the fact that the Przasnysz Court was understaffed, these intervals between the hearings were sufficient to secure appropriate progress in the proceedings. The letter went on to state that the applicant had failed to appear at all these hearings and that the next hearing had been set for 7 February 1995 and the case was ready for a prompt ruling.

In a letter of 11 January 1995 the applicant stressed that he had been present at the hearing of 14 January 1993 and had extensively pleaded his case. It was true that he had not been present at other hearings, but he had requested that the case be considered in his absence. Moreover, the court had never required his attendance at any of the hearings. After the hearings the applicant had submitted several letters to the court in which he explained his position in the light of the progress in the case. It had not transpired from the information which he had obtained on the phone after every hearing that any of the hearings had been adjourned because of his absence or his failure to submit documents or evidence required by the court.

In a letter to the Court of 2 February 1995 the applicant informed the Przasnysz District Court that he would be unable to attend the hearing on 7 February 1995 as his attendance was not obligatory. He maintained his claim and submitted further legal reasoning to support his claim.

On 7 February 1995 the Przasnysz District Court rejected the applicant's claim, considering that the matter was res iudicata since the issue of the ceiling to which the applicant's retirement pension was subjected had been ruled on in two sets of proceedings, terminated by the judgments of 8 September 1992 and 14 May 1993, respectively. On 8 February 1995 the applicant requested that the written grounds be prepared. They were served on the applicant on 3 April 1995.

On 6 April 1995 the applicant lodged an appeal against the decision of 7 February 1995.

On 13 July 1995 the Ostrol*ka Regional Court quashed the decision of 7 February 1995 and ordered that the case be reconsidered. The Court observed that in the first proceedings the only issue which had been decided by the court was whether the calculation of the applicant's retirement benefits complied with the relevant legal provisions. In the compensation proceedings the applicant claimed compensation for the alteration of the conditions of the contract with the Social Insurance and his claim was based on tort. As these two claims were not identical, the second claim could not be considered as being affected by res iudicata.

The next hearing was held on 3 October 1995. The court adjourned the pronouncement of the judgment. The judgment was pronounced on 17 October 1995. On 29 October 1995 the applicant requested that the written grounds be prepared. They were served on him on 5 December 1995. On 13 December 1995 the applicant filed an appeal. On 16 January 1996 the Ostrol*ka Regional Court dismissed the applicant's

appeal.

On 11 March and 23 April 1996 the applicant requested that the reasoned judgment be served on him.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the length of the compensation proceedings.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 July 1995 and registered on 21 September 1995.

On 27 June 1996 the Commission decided to communicate the applicant's complaint concerning the length of the civil proceedings to the respondent Government pursuant to Rule 48 para. 2 (b) of its Rules of Procedure and to declare the remainder of the application inadmissible.

The Government's written observations were submitted on 28 October 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 29 November 1996.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention about the length of the compensation proceedings.

Article 6 (Art. 6) of the Convention, insofar as relevant, reads:

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

a) The Government submit that the application, insofar as it relates to events prior to the date of recognition of the right of individual petition by Poland, is outside the competence ratione temporis of the Commission.

The Commission recalls that Poland has 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 the Commission is not competent to examine complaints relating to violations of the Convention by acts, decisions or events that have occurred prior to this date.

The Commission further recalls that in cases where it can, by reason of its competence ratione temporis, only examine part of the proceedings, it can take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration (see No. 7984/77, Dec. 11.7.79, D.R. 16, p. 92). It follows that the Commission is competent ratione temporis to examine the applicant's complaint insofar as it relates to the proceedings after 30 April 1993, taking into consideration the stage of the proceedings reached at this date.

b) As regards the substance of the complaint, the Government first contend that the length of the proceedings, which after 30 April 1993 lasted two years and eight months, is justified by the particular circumstances of the case. The case should be regarded as very complex as to its legal contents. The complex character of the legal issues involved is shown by the fact that the compatibility of the October 1991 Act with the Constitution was subject to the scrutiny of the

Constitutional Court which decided on 11 February 1992 that certain provisions of the Act were incompatible with the Constitution. In his compensation claim the applicant based the liability of the defendant on tort. Such cases are usually difficult for the courts to decide as it must be established that the conditions of such liability provided for by law are complied with. The compensation case was linked to the applicant's appeal against the decision of the Social Insurance of 1 December 1991 and the Przasnysz Court had to request the Warsaw Court to transmit the case-file.

The Government concede that no delays in the proceedings can be attributed to the applicant. However, certain delays are attributable to the conduct of the parties. On 9 November 1992 and 18 May 1993 the hearings were adjourned as there was no confirmation in the case-file that the summonses had been served on the defendant. The court cannot be held responsible therefor. On 24 November 1992 the hearing was adjourned as the witness failed to appear. On 25 January 1994 and 23 September 1994 the hearings were adjourned as both parties failed to appear. In the course of the proceedings the applicant filed appeals against certain decisions.

As regards the conduct of the authorities, the Government submit that there were no shortcomings for which the courts could be held responsible. The dates of hearings were set at shortest intervals possible. On 5 March 1993 there was a fire in the Przasnysz Court. The applicant's file was not destroyed, but serious difficulties in the functioning of the Court ensued. The applicant's former professional status as a judge in the Olsztyn Regional Court and the fact that he had been a direct superior of civil judges in the jurisdiction of that Court caused many judges to step down which entailed certain delays in the proceedings.

The Government conclude that the length of the proceedings complied with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention and that the application should be declared manifestly ill-founded.

The applicant submits that the case was not complex as shown by the written grounds of the judgment and the facts were not in dispute between the parties.

With regard to the conduct of the authorities the applicant further submits that his professional status as a retired judge of the Olsztyn Regional Court did not warrant that all the judges of the District Court step down. The Ostrol*ka Regional Court transferred the case back to the Szczytno District Court which was within the jurisdiction of the Olsztyn Regional Court. This contributed to further prolongation of the proceedings. The defendant remained passive throughout the proceedings as shown by the fact that his representative was only present at one hearing, and disregarded the summonses. Two hearings were adjourned as there was no confirmation in the case-file that the defendant had received summonses. The Court failed to take any steps to establish whether the defendant had really not received them. The applicant emphasises in this regard that he always received summonses on time. The passivity of the Social Insurance cannot be held against the applicant.

The applicant contends that the case was ready for decision already in early 1994 as he argued in his letter to the Court of 24 April 1994. The Court should have requested the submission of the case-file of another civil case at an earlier stage of the proceedings concerned. The written grounds of the decision of 7 February 1995 were prepared only on 3 April 1995. The fire in the Court did not destroy the case-file and therefore should not have affected the conduct of the proceedings. The Government do not mention the applicant's letters to the President of the Court and the Minister of Justice in which he

complained about the delays in the proceedings.

The Commission considers that the application raises serious issues of fact and law under the Convention the determination of which should depend on an examination of the merits. It follows that this part of the application cannot be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES THE REMAINDER OF THE APPLICATION ADMISSIBLE, without prejudging the merits.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber