AS TO THE ADMISSIBILITY OF

Application No. 35187/97
by Stanislaw SZUMILAS
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 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. 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 27 July 1995 by Stanislaw Szumilas against Poland and registered on 6 March 1997 under file No. 35187/97;

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 1926, is a retired internal security officer, residing in Warsaw.

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

Particular circumstances of the case

On 8 March 1993 the Veterans' and Persecuted Persons' Office (Urz*d do Spraw Kombatantów i Osób Represjonowanych) instituted ex officio proceedings pursuant to the February 1991 Act on Veterans and Persecuted Persons in order to verify whether under this legislation the applicant was entitled to maintain his veteran status which he had been granted in 1974. The applicant was asked to furnish information relating to the grounds on which he had acquired this status on the basis of the 1982 Veterans' Act.

By a decision of 16 May 1993 the Director of the Veterans' and Persecuted Persons' Office (Kierownik Urz*du ds. Kombatantów i Osób Represjonowanych) took away the applicant's veteran status. This

decision was taken in accordance with Article 25 read together with Article 21 of the Act on Veterans and Persecuted Persons of February 1991 which provided, inter alia, that a person who had served in the former internal security services ("aparat bezpieczenstwa publicznego") was not entitled to veteran status. As between 1945 and 1969 the applicant had served first in the Internal Security Bureau (Urz*d Bezpieczenstwa) and, afterwards, in the Internal Security Service (Sluzba Bezpieczenstwa), he fell into the category of persons who were to be deprived of this status.

The applicant lodged an appeal against this decision with the Supreme Administrative Court (Najwyzszy S*d Administracyjny), submitting that he had not obtained veteran status due to the fact that he had served in the anti-Nazi resistance in Pas-de-Calais in France. He also submitted that he had served the independent State and had never departed from moral principles or from rule of law. He further argued that the impugned decision was not in conformity with the law.

In its reply the Veterans' and Persecuted Persons' Office submitted that the circumstances relied on by the applicant as to his service were of no relevance to the case. It was not in dispute between the parties that the applicant had served in the internal security forces. As under the legislation of February 1991 persons having served in the security services lost their veteran status, the decision contested by the applicant was lawful.

In a judgment of 14 June 1995 the Supreme Administrative Court dismissed the appeal. The Court considered that in the present case it was not in dispute between the parties that he had served in the internal security forces. The relevant provisions of the 1991 Veterans' Act provided that persons having served in the former internal security services were not eligible to acquire veteran status and that those who had acquired it were to be stripped thereof, regardless of their function and grade within those services. This interpretation had been reinforced by the Constitutional Court (Trybunal Konstytucyjny) which in its judgment of 15 February 1994 had ruled that service in the former internal security services, in the light of the latter's activities directed against independence organisations, had to be assessed negatively, regardless of the actual status of persons having served therein. Thus, under the relevant legislation the very fact of the applicant's service in the internal security forces must have entailed the loss of his veteran status. The Court concluded that the impugned decision was in conformity with the law.

Relevant domestic law

The February 1991 Act on Veterans and Persecuted Persons took away entitlement to the veteran status accorded by virtue of the Veterans' Acts of 1982 from certain categories of persons who had served in the 1940s and 1950s in various organisations and State organs whose purpose was to combat the political opponents of the communist regime. In particular, Article 25 of the Act provides, inter alia, that a person who had served in the internal security services ("aparat bezpieczenstwa publicznego") was not entitled to acquire veteran status, and those persons who had acquired it were to lose it.

Under the Veterans' Acts of 1982, which was subsequently replaced by the February 1991 Act on Veterans and Persecuted Persons, veteran status gives rise to various special employee and social insurance entitlements. The periods of veteran service are taken into account in calculating the periods giving rise to seniority. The same periods are multiplied by two in calculating periods giving rise to a retirement pension. The veterans who remain in employment are entitled to ten days' additional paid leave per year. The veterans are entitled to retire earlier than other employees: women at the age of 55, and men

at the age of 60, if they have satisfied another requirement for the acquisition of a retirement pension, i.e. if they have worked for periods set out in the Retirement Pensions Act. The retired veterans are further entitled to the special veterans' benefit, paid together with their retirement pension as a certain fixed sum.

Article 26 of the Veterans' Act provides that persons who have lost their veteran status retain their social insurance benefits to which they are entitled pursuant to the generally applicable social insurance laws, in particular the laws governing retirement pensions. Pursuant to Article 25 para. 4 of the February 1991 Act, if a decision is appealed against to the Supreme Administrative Court, the rights stemming from the veteran status are suspended until a final judgment is taken.

COMPLAINTS

The applicant complains that he was deprived of his veteran status. He submits that by the impugned decision he was in fact "held guilty of an offence which did not constitute a criminal offence under national or international law at the time when it was committed". He invokes Article 7 of the Convention.

THE LAW

Insofar as the applicant, relying on Article 7 (Art. 7) of the Convention, could be understood as complaining that the result of the above proceedings amounted to an interference with his property rights as he was deprived thereby of certain social insurance benefits of a pecuniary character, the Commission has examined this complaint under Article 1 of Protocol No. 1 (P1-1) to the Convention.

Article 1 of Protocol No. 1 (P1-1) to the Convention reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived ofhis possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission first observes that Poland ratified this Protocol on 10 October 1994. The first-instance administrative decision which deprived the applicant of his veteran status was taken on 16 May 1993. Pursuant to Article 25 para. 4 of the February 1991 Act, if a decision is appealed against to the Supreme Administrative Court, the rights stemming from the veteran status are suspended until a final judgment is taken. Thus, the Commission is competent ratione temporis to examine this complaint, regard being had to the fact that the final decision in the case, the judgment of the Supreme Administrative Court, was pronounced on 14 June 1995 and that it was only this decision which definitely deprived the applicant of his veteran status and his social insurance rights stemming therefrom.

It is true that, according to the Convention organs' case-law, the making of contributions to a pension fund may, in certain circumstances, create a property right in a portion of such fund and such right may be affected by the manner in which the fund is distributed (No. 4130/69, Yearbook 14, pp. 224 and 240 et seq.; No. 5849/72, Dec. 16.12.74, D.R. 1, p. 46; No.9776/82, Dec. 3.10.83,

D.R. 34, p. 153; No. 12264/86, Dec. 13.7.88, D.R. 57, p. 131). The Commission further recalls that the rights stemming from contributions to payments of a social insurance system are pecuniary rights for the purposes of Article 1 of Protocol No. 1 (P1-1) to the Convention (Eur. Court HR, Gaygusuz v. Austria judgment of 16 September 1996, Reports of Judgments and Decisions 19966-IV, no. 14, p. 1142, paras. 39-41). However, even if it is assumed that Article 1 of Protocol No. 1 (P1-1) (P1-1) guarantees persons who have paid contributions to a social insurance system the right to derive benefits from the system, it cannot be interpreted as entitling that person to a pension of a particular amount (5849/72, Müller v. Austria, Comm. Report. 1.10.75, D.R. 3, p. 25; No. 10671/83, Dec. 4.3.85, D.R. 42, p. 229).

In the present case the applicant lost only his entitlement to the social insurance benefits due to veterans, but, in accordance with Article 26 of the Act on Veterans and Persecuted Persons of February 1991, he retained his rights to the ordinary retirement benefits due under the general social insurance system. Thus, it was only the special privileged status which the applicant lost, his principal social security entitlements having remained intact. The Commission observes that the February 1991 Act on Veterans and Persecuted Persons was partly intended as a condemnation of the political role which the communist security services had played in establishing the communist regime and in repression of political opposition thereto. This legislation was based on the consideration that the members of these services, whose function was to combat the political or armed organisations fighting for the independence of Poland in the 1940s and 1950s, did not merit the special privileges which were accorded to them by the 1982 Veterans Act. The Commission considers that such considerations of public policy, even if the operation of laws resulting therefrom entails a reduction in social insurance benefits, do not affect the property rights stemming from the social insurance system in a manner contrary to Article 1 of Protocol No. 1 (P1-1).

As regards Article 7 (Art. 7) of the Convention, the Commission points out that the applicant was not convicted of a criminal offence and that there has therefore not been any violation of that Article.

It follows that 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 THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber