AS TO THE ADMISSIBILITY OF

Application No. 25871/94
by Józef TYMCIO
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 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 18 July 1994 by Józef TYMCIO against Poland and registered on 7 December 1994 under file No. 25871/94;

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 an engineer residing in Ostrol*ka.

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

In 1975 the applicant entered the civil service at the Ostrol*ka Regional Office (Urz*d Wojewódzki). On 29 June 1990 the Ostrol*ka Governor (Wojewoda) appointed the applicant to the post of director of the Organisation and Supervision Division at the Regional Office (Dyrektor Wydzialu Organizacji i Nadzoru Urz*du Wojewódzkiego).

On 2 July 1990 the Governor dismissed the applicant from his post.

On 18 March 1991 the applicant requested the Minister-Director of the Office of the Council of Ministers (Minister-Szef Urz*du Rady Ministrów) to declare that the decision on his dismissal was null and void.

In an administrative interlocutory decision of 22 April 1991 the Minister rejected his appeal, considering that it had been filed out of the statutory time-limit and that no plausible reasons had been submitted by the applicant to justify the delay. The Minister further stated that the decision on the applicant's dismissal was in accordance with the law. The applicant appealed against this decision to the Supreme Administrative Court (Naczelny S*d Administracyjny).

On 17 April 1991 the Supreme Administrative Court dismissed the applicant's appeal insofar as it concerned the refusal of reinstatement into the time-limit to lodge an appeal and quashed the decision of 22 April 1991 in its remainder for procedural reasons, considering that it had not been issued in a proper form, required by the Code of Administrative Procedure as it should have had the form of an administrative decision on the merits, not of an interlocutory decision.

In a decision of 9 September 1991 the Minister-Director of the Office of the Council of Ministers upheld the decision on the applicant's dismissal. The applicant again lodged an appeal.

On 12 December 1991 the Supreme Administrative Court dismissed the applicant's appeal.

On 13 December 1993 the Ombudsman filed an extraordinary appeal on the applicant's behalf with the Supreme Court (S*d Najwyzszy), claiming that the impugned decision was in breach of, inter alia, the Civil Service Act and that as such it should be quashed and that the case should be reconsidered.

On 20 January 1994 the Supreme Court dismissed the extraordinary appeal, finding that the applicant's dismissal was in accordance with the law.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that the proceedings concerning his dismissal from the civil service were unfair in that the decision on his dismissal was politically motivated; that his case was decided differently from similar cases of other civil servants who were dismissed in June 1990 and subsequently reinstated, that the authorities failed to examine his case in a detailed and conscientious manner and that the impugned decisions were in breach of the domestic law.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention of the unfairness and the outcome of the 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 and public hearing ... by an independent and impartial tribunal established by law."

Insofar as the applicant's complaint relates to events 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 by Poland 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

Convention and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

As regards the proceedings after that date, the Commission recalls that according to the Convention organs' case-law disputes relating to the recruitment, careers and termination of service of public servants are, as a general rule, outside the scope of Article 6 para. 1 (Art. 6-1) of the Convention (Eur. Court HR, Massa v. Italy judgment of 4 August 1993, Series A no. 265-B, p. 20, para. 26; Neigel v. France judgment of 17 March 1997, Reports 1997-II, No. 32, para. 12;).

In the present case the legal conditions of the applicant's employment at the Regional Office were governed by the Civil Service Act. In the proceedings before the Supreme Court instituted by the Ombudsman following the applicant's successful request that an extraordinary appeal be lodged on his behalf, the Ombudsman contested the lawfulness of the termination of the applicant's service under that Act.

The Commission considers that the proceedings before the Supreme Court clearly related only to the question of the lawfulness of the termination of the applicant's career in the civil service. The Commission thus considers that the proceedings in question cannot be regarded as concerning the determination of civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Therefore this provision is not applicable to the proceedings at issue.

It follows that the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber