AS TO THE ADMISSIBILITY OF

Application No. 28240/95
by Jerzy WALICKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 1996, 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
L. LOUCAIDES
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 15 December 1994 by Jerzy WALICKI against Poland and registered on 18 August 1995 under file No. 28240/95;

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 1935, is a retired engineer, residing in Bydgoszcz.

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

From 1961 the applicant worked at various engineering posts at the State Railways engineering design branch in Gdansk. He retired in 1991, retaining an entitlement to reduced prices of railway tickets and to use the medical care of the Railways' medical services as a part of his retirement benefits.

On 1 January 1992 the Railways' engineering design branch was detached from the general structure of the Railways and given a separate status.

On 20 June 1992 the Act on the Entitlement to Public Transport Free of Charge or at Reduced Prices was enacted. It provided in Article 7 that entitlements to the tickets at reduced prices were in

principle abolished, with certain exceptions only. It further invalidated relevant provisions of numerous industrial collective agreements, concerning many categories of civil servants. Its Article 8 provided that the public transport companies could maintain such entitlement for their employees and retired employees, should they wish to do so.

On 12 January 1993 the State Railways' Director General issued an Order No. 4, which maintained the entitlement to reduced prices of the tickets for its retired employees, but took this entitlement away from the retired employees of the Railways' engineering design branch. The Order further took away the entitlement to use the Railways' medical services for this group of retired employees in view of the fact that in 1991 this branch had been detached from the general structure of the Railways and given a separate status.

On 23 March 1993 the applicant filed an action with the Gdansk District Court (S*d Rejonowy), claiming that the Court should establish that he was a retired employee from the State Railways and retained his entitlement to reduced prices of railway tickets and to use the medical care of the Railways' medical services.

On 17 November 1993 the Ombudsman requested that the Constitutional Court (Trybunal Konstytucyjny) examine whether Articles 7 and 9 of the Act on the Entitlement to Public Transport Free of Charge or at Reduced Prices were compatible with the Constitution, in particular its Articles 1, 67 paras. 1 and 2 and 70 paras. 1 and 2 (1). The Ombudsman further requested that the Court determine whether the Order No. 4 of 12 January 1993 was compatible with certain statutes and in particular with Article 8 of the Act on the Entitlement to Public Transport Free of Charge or at Reduced Prices, and with Articles 1, 67 paras. 1 and 2 and 70 paras. 1 and 2 (1) of the Constitution. The National Committee of the "Solidarnosc" Trade Union submitted a similar request.

On 8 June 1994 the Gdansk District Court dismissed the applicant's action, finding in the light of relevant regulations that the employees of the Railways' engineering design branch never had the same status with regard to their labour rights and retirement entitlements as other current and former employees of the Railways.

On 21 June 1994 the Constitutional Court held a hearing. The Court heard the representatives of the Ombudsman and of the "Solidarnosc" Trade Union, of the Parliament, of the Ministry of Transport and of the Prosecutor General.

In the judgment of 28 June 1994 the Constitutional Court declared that the impugned provisions of the Entitlement to Public Transport Act and of the Director General's Order No. 4 of 12 January 1993 were compatible with the Constitution.

On 18 October 1994 the Gdansk Regional Court (S*d Wojewódzki) dismissed the applicant's appeal against the judgment of the Gdansk District Court of 8 June 1994, finding that it was in accordance with the law.

Relevant domestic law

Article 33 of the Polish Constitution of 1952 which remains in force by virtue of Article 77 of the Constitutional Act of 17 October 1992 provides that the Constitutional Court gives rulings on the conformity of legislation with the Constitution. It also promulgates binding interpretations of law.

Articles 22 and 23 of the Constitutional Court Act provide an exhaustive list of institutions who can request the Court to decide

whether a particular regulation is compatible with the Constitution or with statutes. This list includes the President, the Presidium of the Parliament, the parliamentary commissions, a group of fifty members of the Parliament, the Presidium of the Senate, the commissions of the Senate, a group of thirty senators, the State Tribunal, the Government, the Prime Minister, the Ombudsman, the President of the Highest Audit Chamber, the President of the Supreme Court, the President of the Supreme Administrative Chamber and the General Prosecutor. Such requests can also be submitted by the municipalities and national headquarters of certain associations.

There is no individual constitutional complaint to the Court under Polish law as a remedy against decisions of the courts or administrative authorities, nor can individual citizens submit requests for rulings on the compatibility of laws with the Constitution.

COMPLAINTS

The applicant complains under Article 3 of the Convention that the taking away of his entitlements amounts to inhuman treatment.

He complains under Article 6 of the Convention that the proceedings before the Constitutional Court were unfair in that the Court failed in its duty to examine carefully the Ombudsman's motion and, as a result, its judgment was wrong. He further complains that he could not participate in the proceedings before the Constitutional Court in order to present his arguments.

The applicant also relies on Article 13 of the Convention.

The applicant complains under Article 14 of the Convention that the legislation concerned amounts to discrimination against the former employees of the Railways' engineering branch as their lawfully acquired entitlements were taken away from them whereas the other retired employees of the Railways retained theirs.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention that the taking away of his entitlements amounts to inhuman treatment.

Article 3 (Art. 3) of the Convention reads:

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

The Commission observes that the treatment complained of consisted of invalidation, by way of legislative intervention, of the entitlement to purchase railway tickets at reduced prices and of the entitlement to use the health care of the State Railways' medical services. As regards the latter complaint, the Commission observes that Article 3 (Art. 3) of the Convention does not guarantee a right to certain specific health services. Moreover, in the circumstances of the case no loss of or even danger to life or limb is involved. The Commission considers that the treatment concerned did not attain the threshold of inhuman or degrading treatment within the meaning of Article 3 (Art. 3) of the Convention as established in the case-law of the Convention organs (cf. Eur. Court HR, Ireland v. United Kingdom judgment of 18 January 1979, Series A no. 25, p. 56, para. 162).

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

2. The applicant complains under Article 6 (Art. 6) of the Convention that he could not participate in the proceedings before the

Constitutional Court and thus did not have an opportunity to present his arguments to the Court.

Article 6 (Art. 6) of the Convention in its relevant part reads:

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

The Commission recalls that the applicability of Article 6 (Art. 6) of the Convention depends on whether the proceedings at issue concern the determination of "civil rights and obligations". The Commission observes that under Polish law an individual does not have standing in the proceedings before the Constitutional Court. In the present case the applicant was not a party to the proceedings before this Court and the law did not allow him to be a party in such proceedings. Therefore the proceedings at issue did not concern the applicant's civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Thus this provision is inapplicable thereto.

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

Insofar as the applicant's complaint can be understood as relating to lack of access to the Constitutional Court in order to challenge the compatibility of the legislation concerned with the Constitution, the Commission recalls that Article 6 (Art. 6) of the Convention does not guarantee a right of access to a court with competence to invalidate or override a law (No. 14324/88, Dec. 19.4.91, D.R. 69, p. 227). It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant further complains of a breach of Article 13 (Art. 13) of the Convention which guarantees an effective domestic remedy for breaches of the Convention. However, the case-law of the Commission established that Article 13 (Art. 13) does not require a remedy in domestic law for all claims alleging a breach of the Convention; the claim must be an arguable one (Eur. Court HR, Boyle and Rice v. United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In the light of the above conclusions concerning the applicant's complaints under Articles 2 and 6 (Art. 2, 6) of the Convention, the Commission finds that the applicant does not have an arguable claim of a breach of these provisions which warrants a remedy under Article 13 (Art. 13).

This part of the application must also, therefore, be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains under Article 14 (Art. 14) of the Convention that the legislation concerned amounts to discrimination against the former employees of the Railways' engineering branch as their entitlements were taken away from them whereas the other retired employees of the Railways retained theirs.

The Commission recalls that Article 14 (Art. 14) has no independent existence, but only complements the other substantive provisions of the Convention and its Protocols, since it has effect solely in relation to the rights and freedoms safeguarded by those provisions (see Eur. Court HR, Inze v. Austria judgment of 28 October 1987, p. 17, para. 36). The Commission considers that no separate issue arises under this provision of the Convention.

It follows that this part of the application is also 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

G.H. THUNE
President
of the Second Chamber