AS TO THE ADMISSIBILITY OF

Application No. 24147/94
by Wanda WALKOWSKA
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 29 November 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 November 1993 by Wanda Walkowska against Poland and registered on 17 May 1994 under file No. 24147/94;

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 1949, resides in Bielowice.

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

In 1985 the Legnica District Court (S*d Rejonowy) restricted the parental rights of the applicant and her husband over their three daughters, L., E. and R., and appointed a court guardian to supervise them in the exercise of their custody rights.

In 1987 the Legnica District Court dissolved the applicant's marriage and granted custody over the three daughters, L., E. and R., to the applicant.

In 1988 the applicant gave birth to her fourth daughter M.

In October 1991 the applicant's sister requested the Legnica District Court to place the applicant's children in a children's home. She submitted that the applicant suffered from mental disorder and as a result was not able to provide proper care to her daughters. She lacked any practical sense and was unable to organise adequately the children's daily life. She had a tendency to move from place to place with the children, disregarding their need to have a stable home. The

family efforts to help her had proven ineffective as she refused to cooperate.

On 12 January 1992 the Legnica District Court issued an interim decision to place L., E. and R. in a children's home pending the decision on the merits. The Court found that the children had not been properly cared for; that the apartment was filthy and disorderly; that in the current school-year they had begun to attend school only in October 1991. At school the children were usually dirty and did not have the necessary school materials. The Court relied in this respect on the findings of the court guardian.

On 21 January 1992 the Legnica Regional Court (S*d Wojewódzki) dismissed the applicant's appeal.

On 21 April 1992 the Legnica District Court restricted the applicant's parental rights over L., E. and R. and decided to place them in a children's home. The Court also restricted the parental rights of the applicant over M. and appointed a court guardian to supervise her in the exercise of her parental rights.

On 10 June 1992 the Legnica Regional Court dismissed the applicant's appeal against this decision.

On 1 December 1992 the Legnica District Court withdrew the right of care and custody from M.'s father.

On 15 March 1993 the Legnica District Public Prosecutor requested the Legnica Regional Court to institute proceedings to have the applicant declared in part legally incapacitated on account of mental disorder.

On 22 March 1993 the applicant's sister requested the Legnica District Court to withdraw the applicant's parental rights over her youngest daughter M. and to place M. in the children's home. She submitted that the child was neglected; that the applicant did not allow her to play with other children; that the applicant was in hospital for an operation and that she could not take care of M. properly, both on account of her recurrent mental problems and her physical condition. The child was cared for by the applicant's sisters during certain periods, but they were unable to take her on a permanent basis.

On 25 March 1993 the Legnica District Court issued an interim decision to place M. with Children Service (Pogotowie Opiekuncze) until the decision on the merits. The Court considered that the applicant had not secured proper care of the child and had neglected her.

On 10 August 1993 the applicant requested the Legnica District Court to restitute her parental rights over the children.

On 9 September 1993 M. was transferred to the children's home where her older sisters lived.

On 25 November 1993 the Legnica Regional Court decided to legally incapacitate the applicant on account of her mental disorder. The Court found that the applicant had undergone psychiatric treatment for schizophrenia in 1973 and 1974. Afterwards she had refused to take any medical treatment. Her parental rights had been restricted by the Legnica District Court and her children had been placed in a children's home. She lived with S., who was an alcoholic and often ill-treated her. She received financial support from the social security department which she mostly used to buy superfluous things. The Court relied inter alia on an expert opinion of a psychiatrist who had stated that the applicant suffered from schizophrenia and was unable to understand her situation adequately.

On 1 March 1994 the Wroclaw Court of Appeal (S*d Apelacyjny) dismissed the applicant's appeal against the decision concerning her legal incapacitation.

On an unspecified later date the applicant submitted a request to have the decision of her legal incapacitation reconsidered. These proceedings are apparently pending before the Legnica Regional Court.

On 21 September 1994 the applicant submitted a request to the Legnica District Court to have her parental rights restored.

On 12 January 1995 the Legnica District Court fixed a date for the hearing in the proceedings concerning the applicant's request for restitution of her parental rights. At a certain later date the proceedings were suspended pending the decision on the merits in the proceedings concerning the applicant's legal incapacitation.

COMPLAINTS

The applicant complains under Article 2 of Protocol No. 1 to the Convention that as a result of the placing of her daughters in the children's home she was deprived of her right to raise them in conformity with her own religious and philosophical convictions. She submits that the decisions concerning the custody of her children were wrong and that she is able to take competent care of them.

She complains under Article 5 of the Convention that the children have been deprived of their freedom.

The applicant further complains that the decision concerning her legal incapacitation was erroneous as she is of sound mind and has never suffered from any mental disorder.

THE LAW

1. The applicant complains that she was deprived of her right to raise her children in conformity with her own religious and philosophical convictions. She submits that the decisions concerning the custody of her children were wrong and that she is able to take competent care of them.

The Commission has examined these complaints under Article 8 (Art. 8) of the Convention, which states, insofar as relevant:

> "1. Everyone has the right to respect for his ... family life..."

2. 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". The decisions concerning the restriction of the applicant's parental rights and the placing of the children in the children's home were taken before that date.

It follows that insofar as the application relates to the period before 30 April 1993, it 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).

3. As regards the events after 30 April 1993, the Commission recalls that on 21 September 1994 the applicant submitted a request to have her parental rights restored. The proceedings are pending before the Legnica District Court. The applicant has not shown that a final decision on the merits has been issued in these proceedings.

The Commission is not required to decide whether or not the facts submitted by the applicant in support of those complaints disclose any appearance of a violation of the provisions of the Convention as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter after all domestic remedies have been exhausted".

In the present case the proceedings concerning the applicant's parental rights have been suspended until the decision in the proceedings relating to her legal incapacity is pronounced. Therefore the applicant has not exhausted the remedies available under Polish law. It follows that this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicant complains under Article 5 (Art. 5) of the Convention that her children have been deprived of their freedom.

The Commission observes that placing the children in a children's home does not amount to deprivation of liberty within the meaning of this provision. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant complains about the proceedings concerning her legal incapacity which came to an end on 1 March 1994. However, she does not allege any particular shortcomings in these proceedings, but rather challenges the outcome of the proceedings.

The Commission recalls in this respect that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45, Dec. 5.4.94, D.R.77-B, p. 81).

The remainder of the application, if examined under Article 6 (Art. 6) of the Convention, is therefore 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.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)