AS TO THE ADMISSIBILITY OF

Application No. 28617/95
by Eugeniusz WARDZIAK
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 14 December 1994 by Eugeniusz WARDZIAK against Poland and registered on 21 September 1995 under file No. 28617/95;

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 1928, is a retired engineer, residing in Warsaw.

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

From 1949 the applicant worked at various engineering posts at the State Railways. He retired in 1982 from the post in the Railways' engineering design branch, 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 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 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 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 Act on the Entitlement to Public Transport Free of Charge or at Reduced Prices and of the Director General's Order No. 4 of 12 January 1993 were compatible with the Constitution.

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 2 of the Convention that his right to life was breached in that he lost an entitlement to medical care in the railway health services.

The applicant complains under Article 4 of the Convention that his former employer, by taking away his lawfully acquired entitlements,

disregarded entirely its obligations towards the applicant. He submits that his additional entitlements compensated for the low salary and that due to the decisions concerned his work acquired retrospectively a character of forced labour. He complains that his retirement pension is now lower than it would have been had he worked elsewhere.

The applicant complains under Article 6 of the Convention that the proceedings before the Constitutional Court were unfair in that the representatives of the railway pensioners were not a party to the proceedings and were not allowed to present their position to the Court. He submits that the outcome of the proceedings is unfair. He further submits that the entitlements of the former employees of the State Railways' engineering design branch were reduced in a manner identical with those of the other retired employees, no due regard being paid to the particular professional characteristics of this group.

The applicant complains that the Constitutional Court did not rule on the issue of the entitlement to the medical care in the railway medical services.

The applicant complains under Article 14 of the Convention that the impugned decision of the Constitutional Court amounted to discrimination against the former railway employees. He submits in this respect that the Court stated in its judgment that the special privileges of certain groups of retired employees "were characteristic of the (socialist) system and now they are its remnants".

THE LAW

1. The applicant complains under Article 2 (Art. 2) of the Convention that his right to life was breached in that he lost an entitlement to medical care in railway health services.

Article 2 (Art. 2) of the Convention, insofar as relevant, reads:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

The Commission observes that this provision 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. Therefore the situation complained of does not amount to a breach of the applicant's right to life within the meaning of Article 2 (Art. 2) of the Commission. 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.

2. The applicant complains under Article 4 (Art. 4) of the Convention that due to the decisions concerned his work acquired retrospectively a character of forced labour.

Article 4 (Art. 4) of the Convention, insofar as relevant, provides:

> "2. No one shall be required to perform forced or compulsory labour."

Insofar as the applicant complains that as a result of the impugned decisions his work acquired retrospectively a character of forced labour, even assuming that such retroactive effect of the decision concerned could be considered, 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 of the

rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". In accordance with this limitation in the Polish declaration, 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. Therefore this complaint is outside its competence ratione temporis and must be rejected as being incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant complains under Article 6 (Art. 6) of the Convention that the proceedings before the Constitutional Court were unfair in that the representatives of his professional group were not a party to the proceedings and were not allowed to present their position to the Court. He submits that the outcome of the proceedings is unfair. The applicant complains that the Constitutional Court did not rule on the issue of the entitlement to the medical care in the railway medical services.

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 and could not be a party to the proceedings before this Court. 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. Consequently, this provision is inapplicable thereto. It follows that the 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 with the Constitution of the legislation concerned, 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, Rep. 14.9.91, 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.

4. The applicant complains under Article 14 (Art. 14) of the Convention that the impugned decision of the Constitutional Court amounted to discrimination against the former employees of the Railways' design branch.

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 G.H. THUNE

Secretary
to the Second Chamber

President
of the Second Chamber