AS TO THE ADMISSIBILITY OF

Application No. 29456/95
by Miroslaw WISNIEWSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 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

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 5 November 1994 by Miroslaw WISNIEWSKI against Poland and registered on 5 December 1995 under file No. 29456/95;

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 1958, serves a prison sentence in Szczecin prison.

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

In 1991 the applicant was sentenced to imprisonment. On 19 February 1992 the Warsaw Regional Court (S*d Wojewódzki) released the applicant on parole.

On 23 December 1992 the Szczecin District Court (S*d Rejonowy) convicted the applicant of theft and sentenced him to two years' imprisonment. He served this sentence from 29 February 1992 to 23 August 1993, when he was released on parole.

On 9 August 1993 the Szczecin Regional Court decided to revoke the applicant's release on parole of 19 February 1992, having regard to his conviction for theft by the Szczecin District Court.

On 4 January 1994 the applicant was charged with aggravated theft. On 10 February 1994 he was remanded in custody in another case.

On 16 August 1994 the Szczecin District Public Prosecutor transmitted a bill of indictment to the Szczecin District Court. On 16 June 1994 the Szczecin District Court convicted him of theft and sentenced him to two years' imprisonment. On 27 October 1994 the Szczecin Regional Court dismissed the applicant's appeal.

On 12 October 1994 the Szczecin District Prosecutor terminated the investigations concerning the applicant's complaint that his personal belongings had been stolen by a policeman who had arrested him on 10 February 1994, having found that the applicant's belongings had been given back to him.

On 16 October 1994 the Szczecin Regional Court dismissed the applicant's appeal against the judgment of the Szczecin District Court of 16 June 1994.

On 17 October 1994 the Szczecin Regional Court ordered execution of the decision of 9 August 1993 by which the applicant's release on parole had been revoked.

On 28 October 1994 the Drawsko District Prosecutor refused to institute criminal proceedings concerning the applicant's complaint that he was being poisoned by the medical services of the Wierzchowo prison, having established that appropriate medicaments against allergy had been administered to the applicant.

In a letter of 27 December 1994 the governor of Koszalin District prison, having examined the applicant's five complaints, concerning alleged unlawful practices of the prison administration with regard to various aspects of prison life, informed him that the complaints were unfounded. In a letter of 30 December 1994 the applicant was informed that the examination of another seven complaints had not shown that any irregularities had occurred.

On 5 May 1995 the Minister of Justice refused to lodge an extraordinary appeal against the judgment of the Szczecin District Court of 16 June 1994, upheld by the Szczecin Regional Court on 16 October 1994.

On 8 March 1996 the applicant filed a civil action with the Szczecin Regional Court against the State Treasury - Regional Headquarters of the Szczecin police, claiming compensation. He submitted that during the transport from Czarne prison to the prison in Szczecin in February 1996 the temperature in the police car had fallen below zero and so remained throughout the journey. As a result, he had subsequently fallen ill. The applicant complained thereof to the Governor of the Szczecin Prison and to the General Police Headquarters; in reply he was informed that the heating system in the car had worked on the relevant day, but it was not efficient enough as the car was old and in bad technical condition. It had been impossible for the policemen in the convoy to improve the heating. These proceedings are pending.

On 3 March 1996, in reply to the applicant's complaint, the governor of Koszalin prison informed him that delay in the mailing of his letters had been caused by financial difficulties and the impossibility to buy post stamps. In the subsequent replies to his further complaints about the alleged delays in mailing his correspondence he was informed that the internal enquiries had shown that no irregularities had occurred in this respect.

On 22 March 1996 the Slupsk Regional Court granted exemption from court fees to the applicant in civil proceedings against the State Treasury - Czarne prison concerning his claim for protection of his personal rights, based on Article 24 of the Civil Code.

Apparently proceedings for compensation against the State

Treasury - Wierzchowo Pomorskie prison are pending before the Koszalin Regional Court.

The applicant filed a number of complaints about all possible aspects of prison life to various authorities. In the replies he was informed that his allegations were groundless.

COMPLAINTS

The applicant complains under Article 3 of the Convention about the conditions in prisons in which he served his sentence. He submits that the prisons are in very bad technical conditions, that the cells are overcrowded, that the food and clothing are of unsatisfactory quality and that the medical care is insufficient. He submits that these conditions caused his nervous breakdown and that he was constantly harassed by the prison guards.

The applicant complains under Article 6 paras. 1, 2 and 3 (c) of the Convention that the last criminal proceedings against him were unfair in that his officially assigned lawyer remained passive throughout the court hearings; that he was regarded as being guilty long before the judgment was pronounced; that his defence rights were breached in that the court did not allow him to put any questions to the witnesses and ordered him to reply only "yes" or "no" to the Court's questions.

He further complains under Article 6 para. 1 that it was not until 17 October 1994 that the Szczecin Regional Court ordered execution of the decision of 9 August 1993 by which the applicant's release on parole had been revoked, which amounted to an unreasonable delay.

The applicant further complains under Article 1 of Protocol No. 1 that upon his arrest in February 1994 the policeman took from his apartment a bag containing his personal belongings and that only some of them were later given back to him.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention about the conditions in the prisons in which he serves his sentence.

The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope 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. 65, para. 162). Having examined the material submitted, the Commission finds no evidence that the prison conditions complained of raise an issue under this provision of the Convention.

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 paras. 1, 2 and 3 (c) (Art. 6-1, 6-2, 6-3-c) of the Convention that the last criminal proceedings against him were unfair. However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6 (Art. 6) of the Convention as the judgment complained of was pronounced on 16 October 1994, i.e. more than six months before the date on which the application was introduced. The applicant has not therefore lodged his application within the six months' time-limit provided for in Article 26 (Art. 26) of the Convention.

It follows that this complaint is inadmissible within the meaning

of Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that it was not until 17 October 1994 that the Szczecin Regional Court ordered execution of the decision of 9 August 1993 by which his release on parole had been revoked, which amounted to an unreasonable delay.

The Commission has examined this complaint under Article 5 para. 1 (a) (Art. 5-1-a) of the Convention, which reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> a. the lawful detention of a person after conviction by a competent court; ..."

The Commission recalls that the detention or re-detention after revocation of a parole licence is justified from the outset by the initial conviction (No. 13183/87, Dec.14.12.1988, D.R. 59, p. 235).

In the present case the applicant was convicted in 1991 and on 19 February 1992 he was released on parole. In view of his subsequent conviction of 23 December 1992, the Szczecin Regional Court ordered that the parole licence be revoked and the execution of this decision was subsequently ordered on 17 October 1994. It should be noted that the applicant was serving another sentence at that time. The Commission considers that the revocation of his parole and the subsequent decision to execute this revocation were justified by the initial conviction and the lapse of time between the revocation of release on parole and the decision to execute it did not affect the lawfulness of the applicant's re-detention.

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 finally complains under Article 1 of Protocol No. 1 (P1-1) that upon his arrest in February 1994 his personal belongings were stolen by the police. However, the Commission is not required to examine whether or not the facts submitted by the applicant in support of this part of the application disclose any appearance of a violation of the Convention as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with a matter after all domestic remedies have been exhausted".

In the present case the Commission observes that the applicant filed a request to have criminal proceedings instituted in this respect. On 12 October 1994 the Szczecin District Public Prosecutor refused to do so, having established that the belongings that the applicant had with him at his arrest had been returned to him. The applicant did not lodge an appeal against this decision with the Szczecin Regional Public Prosecutor.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber