AS TO THE ADMISSIBILITY OF

Application No. 26622/95
by Marek ZMALINSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 15 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
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 31 March 1994 by Marek ZMALINSKI against Poland and registered on 3 March 1995 under file No. 26622/95;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 25 March 1996 and the observations in reply submitted by the applicant on 28 May 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1957, resides in Tychy.

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

On 21 November 1991 the applicant's employer, a Cooperative U., transferred him to another post.

On 11 December 1991 the applicant filed an action with the Warsaw-Praga District Court (S*d Rejonowy), requesting reassignment to his previous post.

On 28 April 1992 the Cooperative's Board took a resolution to divest the applicant of his membership in the Cooperative and dismissed

him from work. On 5 May 1992 he filed an action with the Warsaw Regional Court (S*d Wojewódzki), asking for the resolution of the Cooperative concerning his membership and for his dismissal to be declared null and void and for reinstatement. On 14 May 1992 he submitted an alternative claim for compensation.

On 16 June 1992 the applicant filed an action with the Warsaw-Praga District Court for rectification of his references. This claim was later joined to the case relating to the applicant's transfer to another post and compensation therefor. On 1 October 1992 a hearing was held in these proceedings.

On 5 November 1992 the Warsaw Regional Court dismissed the applicant's action for reinstatement and compensation as it found that the dismissal was justified and the compensation in such a case was not provided for by relevant laws.

On 11 February 1993 the Warsaw Court of Appeal (S*d Apelacyjny) quashed this judgment and ordered that the case be reconsidered, finding that the Regional Court had been superficial in examining the case and had failed to cite relevant evidence to substantiate its findings.

On 16 June 1993 the Warsaw Regional Court dismissed the applicant's action for reinstatement and compensation. The applicant filed an appeal.

On 19 August 1993 the Warsaw-Praga District Court suspended the proceedings concerning the applicant's transfer to another post, and his claim for compensation and rectification of the references, considering that the outcome of the proceedings relating to the applicant's dismissal would be decisive for the further conduct of this case. In a letter of the same day the applicant requested that the minutes of the hearing of 19 August 1993 be supplemented and rectified. He also complained that a request to take evidence which he had made on 25 March 1993 had not been dealt with.

On 22 September 1993 the applicant appealed against the decision to suspend the proceedings.

On 11 October 1993 the applicant concluded a settlement with the Cooperative before the Warsaw-Praga District Court relating to the rectification of his references.

On 21 October 1993 the Warsaw Regional Court dismissed the applicant's appeal against the decision to suspend the proceedings.

On 17 March 1994 the Warsaw Court of Appeal upheld the judgment of the Regional Court of 16 June 1993 in the proceedings concerning the claim for reinstatement and compensation.

On 16 April 1994 the Warsaw-Praga District Court resumed the proceedings concerning the applicant's transfer and compensation claim, which had been suspended since 21 October 1993.

On 8 August 1994 the Warsaw-Praga District Court dismissed the applicant's action in the proceedings concerning the applicant's transfer and compensation claim.

The applicant filed an appeal. On 24 November 1994 the Court pronounced a judgment supplementing the judgment of 8 August 1994 and dismissing the applicant's application for the negative assessment of his work to be deleted from his personal file held by his former employer. The applicant filed a further appeal against this judgment. On 14 February 1995 the case-file reached the appellate court, i.e. the Warsaw Regional Court. The date of hearing was fixed for 7 June 1995. The representative of the defendant cooperative failed to appear and the hearing was adjourned until 11 July 1995. The applicant failed to

appear. The next hearing was held on 11 September 1995. On 13 September 1995 the applicant challenged judge J. On 20 September 1995 the entire panel was disqualified as the same judges had issued a decision of 21 October 1993 in the same proceedings. On 18 October 1995 the applicant challenged judge R. who had participated in the panel which had pronounced the judgment of 8 August 1994. Subsequently the judge stepped down.

On 20 November 1995 the Warsaw Regional Court dismissed the applicant's appeal.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention about the length of the civil proceedings concerning his transfer to another post and compensation.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 March 1994 and registered on 3 March 1995.

On 29 November 1995 the Commission decided to communicate the applicant's complaint concerning the length of proceedings to the respondent Government and to declare the remainder of the application inadmissible.

The Government's written observations were submitted on 25 March 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 28 May 1996.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention about the length of the compensation proceedings.

Article 6 (Art. 6) of the Convention, insofar as relevant, provides:

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

1. The Government submit that the application, insofar as it relates to events prior to the date of recognition of the right of individual petition by Poland, is outside the competence ratione temporis of the Commission.

The Commission recalls that Poland has 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". It follows that 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.

The Commission further recalls that in cases where it can, by reason of its competence ratione temporis, only examine part of the proceedings, it can take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration (see No. 7984/77, Dec. 11.7.79, D.R. 16 p. 92). It follows that the Commission is competent ratione temporis to examine the applicant's complaint insofar as it relates to the proceedings after 30 April 1993, taking into consideration the stage of the proceedings reached at this date.

2. Under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted.

The Government contend that the applicant cannot be regarded as having exhausted available domestic remedies with regard to the complaint about the length of the proceedings. The Government submit that there is no single general remedy available under Polish law to complain about the length of proceedings. However, they submit that the usual judicial remedies, i.e. appeals against procedural and substantive court decisions, could be employed in this respect. He has not shown that he relied on the length of proceedings in the appeals which he had filed against various decisions of the courts. The Government further submit that an administrative hierarchical complaint about the length of proceedings may be lodged with the president of the competent court, or with the president of the superior court.

The applicant submits that the Government has not shown that the judicial remedies referred to by them are effective and would have reduced the length of the proceedings. The administrative hierarchical complaint does not constitute an effective remedy in this respect as such complaint is only information for the use of the competent authority and the complainant is entitled only to information about the manner in which his complaint was dealt with.

The Commission recalls in this respect its finding that there is no effective remedy under Polish law to complain about the length of civil proceedings (No. 24559/94, Dec. 6.9.95, D.R. 82-B, p. 76). Therefore the Commission finds that it has not been established that the applicant had any effective remedy at his disposal which would have enabled him to submit his complaints under Article 6 para. 1 (Art. 6-1) of the Convention to the domestic authorities. Accordingly, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

3. As to the merits of the complaint, the Government first submit that the proceedings were complex. They involved legal issues of labour law and the law on cooperatives. Initially three sets of interrelated proceedings were conducted and subsequently two of them were joined. The proceedings at issue had to be suspended until a final decision in the proceedings concerning the reinstatement claim was pronounced as their outcome was decisive for the further course of the proceedings concerned in the present case.

The Government further state that the applicant's conduct significantly contributed to the prolongation of the proceedings. On 21 November 1994 he moved from Warsaw to Tychy without informing the court thereof. The applicant failed to accept the summons for the hearing on 11 July 1995 and the hearing had to be adjourned. In September and October 1995 the applicant successively challenged two presiding judges.

With regard to the conduct of the authorities, the Government submit that after 30 April 1993 there were no other delays in the proceedings than those caused by the staffing shortages in the courts in Warsaw. They emphasise that the hearings were held at the shortest possible intervals, given the general situation of the judicial system in Poland.

The Government conclude that the length of the proceedings complied with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention and that the application should thus be declared manifestly ill-founded.

The applicant submits that the fact that his case involved issues of both labour and cooperative law did not suffice to render it complex, in particular as his various claims had the same factual

basis. All relevant evidence was taken at two hearings on 1 October 1992 and 8 August 1994. The character of the case as a labour law case required particular diligence on the part of the authorities.

With regard to the conduct of the authorities, the applicant submits that within sixteen months from 1 May 1993 to 8 August 1994 only three hearings were fixed, out of which two were adjourned. In the proceedings concerning the claim for reinstatement and compensation, the outcome of which was decisive for the proceedings at issue, the first instance judgment was pronounced on 16 June 1993 and the hearing in the appeal proceedings was held only on 17 March 1994, i.e. after nine months of inactivity. Further, regard must be had to the fact that in the judgment of 8 August 1994 the court did not pronounce itself on the whole claim which entailed further prolongation of the proceedings as a supplementary judgment had to be pronounced on 24 November 1994. Subsequent appellate proceedings lasted until 20 November 1995. The Court fixed four dates for hearings out of which only the last hearing was held. The applicant appeared on all dates. He informed the court of his change of address by a letter of 21 November 1994. Despite that, the summons to a hearing on 7 July 1995 was sent to his former address. It is true that he submitted two requests that the judges in the appellate proceedings step down, but it should be stressed that his first request of 13 September 1995 was successful due to the fact that they had participated in the same proceedings in taking the decision of 13 October 1993 which called their impartiality in question. The court should have taken this into consideration ex officio when assigning the case to those judges. His second challenge of the judges did not prolong the proceedings. The date of the hearing was set for 20 November 1995 on 18 October 1995 and the decision that the judge should step down was taken on 19 October 1995. The hearing was held on 20 November 1995 as previously fixed.

The applicant concludes that on the whole the proceedings were not completed within a reasonable time.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (Eur. Court HR, Vernillo v. France judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Commission observes that the proceedings began in December 1991, the date on which the applicant filed his claim with the Warszawa-Praga District Court, and ended on 20 November 1995, when the Warsaw Regional Court dismissed his appeal against the first instance judgment. They lasted three years and eleven months, out of which two years, six months and twenty days after the date on which the Commission's competence to examine applications against Poland became effective. It has to be noted that the court adjourned these proceedings on 19 August 1993 to await the outcome of other civil proceedings, concerning the applicant's claim for reinstatement. These proceedings ended on 17 March 1994 and their conduct had direct influence on the length of the proceedings concerned, which were resumed on 16 April 1994 after their adjournment.

The Commission considers that the case was complex in that intertwined issues of labour law and cooperative law were involved and that the outcome of the second set of the proceedings was decisive for the further conduct of the case. It is true that in the judgment of 8 August 1994 the Warsaw-Praga District Court failed to rule on one part of the applicant's claim and that this omission had to be remedied by a further judgment of 20 November 1994. However, the Commission considers that there were no periods of inactivity in the conduct of

the case on the part of the authorities. In particular, the proceedings were resumed speedily after the other set of proceedings was terminated on 17 March 1994 and lasted one year and seven months until the final judgment of the Warsaw Regional Court. The applicant failed to appear at one hearing before the Warsaw Regional Court and the hearing was adjourned. He further on two occasions challenged the judges who subsequently stepped down.

In the light of the criteria established by the case-law and having regard to the circumstances of the present case, the Commission concludes that the length of the proceedings was not excessive.

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

For these reasons, the Commission, unanimously,

DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber