



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

**CASE OF ZWIERZYŃSKI v. POLAND**

*(Application no. 34049/96)*

JUDGMENT

STRASBOURG

19 June 2001

**FINAL**

*19/09/2001*



**In the case of *Zwierzyński v. Poland*,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs W. THOMASSEN, *President*,

Mr L. FERRARI BRAVO,

Mr J. MAKARCZYK,

Mr R. TÜRMEŃ,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 23 May and 15 June 2000, and 29 May 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 34049/96) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Ryszard Zwierzyński (“the applicant”), on 15 July 1996.

2. The applicant was represented by Mrs A. Zemke, legal adviser in Białystok. The Polish Government (“the Government”) were represented by their Agent.

3. The applicant alleged a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereof.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, a Chamber was constituted to consider the case (Article 27 § 1 of the Convention and Rule 26 § 1).

6. By a decision of 15 June 2000, following a hearing on the admissibility and the merits of the application (Rules 54 § 4 and 59 § 2) held at the Human Rights Building, Strasbourg, on 23 May 2000, the Chamber declared the application admissible [*Note by the Registry*. The Court’s decision is obtainable from the Registry].

There appeared before the Court:

(a) *for the Government*

Mr K. DRZEWICKI,	<i>Agent,</i>
Mrs R. KOWALSKA,	
Mr A. KALIŃSKI,	<i>Counsel,</i>
Mr J. GEISLER,	<i>Adviser;</i>

(b) *for the applicant*

Mrs A. ZEMKE, Legal Adviser, Białystok,	<i>Counsel,</i>
Mrs E. MOROZ-USTYMOWICZ,	<i>Adviser.</i>

The Court heard addresses by Mrs Zemke, Mr Drzewicki, Mr Kaliński, and Mrs Kowalska, as well as Mr Drzewicki's replies to questions put by two of the judges.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. In 1937 the applicant's father purchased from S. a property located in Łomża.

8. In 1950 the Białystok Regional Office (*Urząd Wojewódzki*) asked the Land Registry Division of Łomża Municipal Court (*Sąd Grodzki*) to insert a notice in the register stating that an expropriation procedure had begun in respect of the property, the registered owner of which was Mr B. Zwierzyński, the applicant's father. On 26 June 1950 the Municipal Court decided to file the application with the Land Registry Division and notify the interested parties.

On 24 July 1952 the Białystok Regional Executive of the National Council (*Prezydium Wojewódzkiej Rady Narodowej*) expropriated B. Zwierzyński's property in the public interest in accordance with the decree of 7 April 1948. Compensation was awarded to the former owner by a decision of 10 July 1961, upheld on 10 February 1962. The payment in compensation was credited to the State deposit account but neither the former owner nor his heirs claimed it.

9. On 2 December 1980 the Minister for Economic Affairs (*Minister Gospodarki*) dismissed an application by the applicant's father for the expropriation decision to be set aside.

10. On 10 August 1990, after B. Zwierzyński's death, the applicant's mother lodged an application to set aside the decision of 2 December 1980.

On 18 July 1991 the Minister for Economic Affairs declared the entirety of the proceedings since the 1952 expropriation decision null and void on account of a manifest mistake in law. In 1945 the owner had entered into a leasing contract with the State authorities and so it could not legitimately be stated that the land and the building had been occupied unilaterally by the administrative authorities. Consequently, the situation did not fall within the scope of the 1948 expropriation decree.

11. The Łomża regional police authority (*Komenda Wojewódzka Policji*), which currently occupies the premises, appealed against the Minister's decision to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) in Warsaw.

12. On 19 December 1992 that court set aside the decision and remitted the case to the Minister for reconsideration.

13. In a decision of 24 July 1992, upheld by the Supreme Administrative Court on 23 November 1993, the Minister reiterated his finding that the proceedings since 1952 were null and void.

14. On 21 June 1994 the Olsztyn District Court decided that the applicant and his sister should each inherit half of their deceased parents' estate.

15. The tax authorities asked the applicant to pay inheritance tax. The applicant asked for the deadline for payment to be extended because negotiations with a view to the sale or rent of the building were under way with the regional police authority, which was occupying the premises. On 4 November 1994, having received confirmation from the regional police authority that negotiations were indeed taking place, the Chairman of Olsztyn Municipal Council extended the deadline. On 20 June 1995 the Olsztyn Tax Office (*Urząd Skarbowy*) extended the deadline to a date which has not been specified.

16. On 12 September 1994 the Land Registry Division of the District Court (*Sąd Rejonowy Wydział Ksiąg Wieczystych*) entered the property in the Land Register, identifying the applicant and his sister as the owners. However, they have never obtained its return.

17. The negotiations on the sale of the property foundered and, moreover, the occupier never paid the rent fixed by the owners. Since 1995 the applicant has been paying property tax.

18. On 28 September 1992 the Treasury (*Skarb Państwa*), assisted by the Łomża District Office Director (*Kierownik Urzędu Rejonowego*), acting on behalf of the regional police authority (the current occupier), brought an action before the civil courts asserting acquisition of title to the property through adverse possession (*stwierdzenie nabycia własności nieruchomości przez zasiedzenie*). On 25 November 1992 the Łomża District Court stayed the proceedings at the request of the Łomża District Office Director, taking the view that the outcome of the administrative proceedings pending before the Supreme Administrative Court on the application to set aside the 1952

expropriation decision would have a decisive impact on the action for acquisition of title to the property through adverse possession. On 18 January 1995 it lifted the stay at the Director's request.

19. On 6 October 1995 the District Court granted the Treasury's application, taking the view that the public authority had occupied the premises in good faith for the period of twenty years required under Article 172 of the Civil Code. The decision was upheld on 1 February 1996 by the Łomża Regional Court (*Sąd Wojewódzki*).

20. On 3 October 1996 the Minister of Justice lodged an appeal on points of law with the Supreme Court (*Sąd Najwyższy*) on the applicant's behalf. He submitted that in the light of the Supreme Court's case-law, there could be no possession in good faith where an expropriation decision had been set aside. Consequently, in view of the decision of 1993 setting aside the expropriation decision of 1952, the applicant had retrospectively recovered title to the property for the entire period during which the premises had been occupied by the State.

21. On 29 October 1996 the Supreme Court set aside the lower courts' decisions and remitted the case to the District Court for reconsideration. It pointed out that it had had to rule on the same question on a number of occasions. It had consistently held that if the Treasury's right to dispose of a property "like a property owner" was based on an administrative decision which was subsequently set aside with retrospective effect on account of a manifest mistake of law, the period of occupation could not be taken into account when calculating the period of possession giving title to property through adverse possession for the purposes of Article 172 of the Civil Code.

22. The case was remitted to the Łomża District Court. On 11 February 1997 the District Office Director, who is a representative of the State, applied for the proceedings to be stayed on the ground that the District Office had asked the Minister of Justice to lodge an appeal on points of law against the decision of 21 June 1994 in which the Olsztyn District Court had ruled that the applicant and his sister should each inherit half of their parents' estate.

23. On 24 February 1997 the Land Registry Division of the Łomża District Court informed the applicant that the Treasury had been listed in the register as the owner of the property. It specified, however, that it had added of its own motion a notice referring to the proceedings brought for the acquisition of title to the property through adverse possession in order to protect the applicant's and his sister's claims.

24. On 2 April 1997 the Minister of Justice lodged the requested appeal with the Supreme Court and on 24 June 1997 the Łomża District Court stayed the proceedings.

25. On 9 September 1997 the Supreme Court granted the appeal on points of law, set aside the decision of 21 June 1994 and remitted the case to

the District Court. It pointed out that the first issue to be decided was whether the heirs' parents were indeed the owners of the property in question. When the property had been purchased by the applicant's parents, the law had required that a notarial deed be drawn up for the purchase to be valid. In the absence of such a deed, and where no one had been in possession of the property long enough to acquire title to it by adverse possession, the assets of the estate were deemed to comprise only the possession (*posiadanie*) of the property, not the title to it.

The Supreme Court also noted that the appeal had been lodged after the expiry of the time-limit (six months after the disputed decision) set by Article 421 § 2 of the Code of Civil Procedure, but considered that questions relating to property law required special protection and that it would have been detrimental to the Republic of Poland's interests to dismiss the application for being out of time because to do so would have infringed a right which was actually vested in another person.

26. On 8 July 1998 the Olsztyn District Court, to which the case had been remitted, ruled that the applicant's parents' estate should be shared equally between the applicant and his sister. The assets of the estate comprised the disputed property. The decision was identical in substance to the one of 21 June 1994.

27. On 23 September 1998 the Łomża District Court lifted the stay ordered on 24 June 1997 on the proceedings for acquisition of title to the property through adverse possession.

28. On 17 September 1998 the applicant lodged an application with the Land Registry Division of the Łomża District Court to have the entry in the register rectified so that he was listed as the owner. The ground for his application was that on 8 July 1998 the Olsztyn District Court had named him and his sister as the inheritors of their parents' property. On 6 November 1998 the District Court asked the applicant to produce a decision proving that the entry in the register was not consistent with the legal status of the property, failing which his application would be dismissed. On 14 January 1999 the applicant complained about that requirement to the Łomża Regional Court, but without success. On 3 February 1999 the Land Registry Division of the District Court rejected his application to have the entry in the register rectified.

29. In December 1998 the applicant was summoned to the Olsztyn District Court, which had decided the matter of the division of the estate. He was told that the heirs of S., who had sold the property in issue to the applicant's father in 1937, had brought an action to have the proceedings concerning the division of the estate reopened. They said that they had been informed of the outcome of the proceedings by the regional police authority's legal adviser and argued that they had rights over the property. On 14 December 1998 the District Court to which the Treasury had applied for acquisition of title to the property through adverse possession suspended

its consideration of that case pending the outcome of the action to reopen the proceedings concerning the division of the estate.

30. After hearings held on 28 January, 9 March, 26 April and 13 May 1999, the Olsztyn District Court rejected the application by S.'s heirs. Its decision was upheld on appeal by the Olsztyn Regional Court on 27 October 1999. On 17 December 1999 S.'s heirs lodged an appeal on points of law with the Supreme Court.

31. On 17 October 2000 the Supreme Court allowed the appeal and remitted the case to the Olsztyn Regional Court for reconsideration. It observed that the Regional Court should have satisfied itself not only that the appellant had *locus standi*, which it had done, but also that the decision taken by the District Court on 8 July 1998 at the end of the proceedings which S. had applied to have reopened had related to his rights.

32. The case is still pending before the Olsztyn Regional Court.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

33. Article 172 of the Civil Code provides:

“§ 1. Everyone in possession of property although he is not the owner shall acquire title thereto if he has been in continuous and independent possession thereof for twenty years, save where he came into such possession in bad faith.

§ 2. After thirty years, persons in possession of property shall acquire title thereto even if they came into possession thereof in bad faith.”

34. According to the Supreme Court's established case-law, if the Treasury's right to dispose of a property “like a property owner” is based on an administrative decision which is subsequently set aside with retrospective effect on account of a manifest mistake of law, the period of occupation may not be taken into account when calculating the period of possession giving title to property through adverse possession for the purposes of Article 172 of the Civil Code (see, in particular, OSP 1993/7-8/153 and OSNCP 1994/3/49).

35. Article 156 of the Code of Administrative Procedure vests State administrative bodies with authority to set aside administrative decisions under certain conditions. Article 160 provides that anyone who suffers damage as a result of an administrative decision that may be set aside under Article 156 may bring an action in damages for actual harm done, directed, in principle, against the administrative body which took the decision. The procedure for compensation claims is set out in the Civil Code.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant alleged a violation of Article 6 § 1 of the Convention, arguing that the proceedings brought by the Treasury for acquisition of title to the property through adverse possession had been excessively lengthy.

37. The relevant provisions of Article 6 § 1 provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal ...”

#### A. Period to be taken into consideration

38. The Government stressed that the Court only had jurisdiction in respect of the facts occurring after 1 May 1993, when Poland had recognised the right of individual petition.

39. Although the parties did not raise the question, the Court considers it necessary to point out that, according to its established case-law, all appeals, including extraordinary ones, are to be taken into account when calculating the length of proceedings, provided that the proceedings initiated after they were lodged had a decisive impact on the applicant's civil rights and obligations within the meaning of Article 6 § 1 (see, for instance, *Poiss v. Austria*, judgment of 23 April 1987, Series A no. 117, p. 103, § 50). Consequently, in order to determine whether the overall length of the proceedings has been reasonable in the instant case, account must be taken of the proceedings initiated after the Minister of Justice entered an appeal on points of law (see paragraph 20 above).

40. The Court notes that the proceedings complained of began on 28 September 1992 and are still pending before the Łomża District Court. To date, therefore, they have lasted some eight years and eight months. However, given its jurisdiction *ratione temporis*, the Court can only consider the period of about eight years and one month which has elapsed since 1 May 1993, although it will have regard to the stage reached in the proceedings on that date (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI).

## **B. Reasonableness of the length of the proceedings**

41. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. It will also take account of what is at stake for the applicant (see, among many other authorities, *Portington v. Greece*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2630, § 21, and *Kudła*, cited above).

### *1. Complexity of the case*

42. The Government argued implicitly that the length of the proceedings was accounted for by the complexity of the case.

43. This argument was disputed by the applicant.

44. The Court considers that although the case was indeed somewhat complex, this alone could not justify the overall length of the proceedings.

### *2. Conduct of the applicant*

45. The Government submitted that the applicant's conduct had contributed to delays in the proceedings. It pointed out in that connection, without providing any details, that in the period between February and August 1995 the Łomża District Court had adjourned four hearings at the request of the applicant alone. It also observed that on 8 March 1995 the applicant had applied for the case to be taken out of the District Court's hands. According to the Government, this application had delayed the hearing on the merits for two months.

46. The applicant contested the Government's interpretation of the facts.

47. The Court considers that even if the applicant was indeed responsible for a two-month delay, that could not justify the overall length of the proceedings.

### *3. Conduct of the relevant authorities*

48. The Government maintained that the judicial authorities had acted with all due diligence in dealing with the case. It pointed out that the proceedings had been stayed on three occasions and that the proceedings on the merits had only lasted for about two years. During this period, the case had been heard by trial and appeal courts at two levels and then by the Supreme Court.

49. The Government pointed out that the proceedings before the Łomża District Court (see paragraphs 18 and 19 above) had begun on 28 September 1992 and ended on 6 October 1995 with the decision to allow the Treasury's

application for acquisition of title to the property in issue through adverse possession. They conceded that the time that had elapsed between the lodging of the application and the outcome of the proceedings might seem long but the main cause had been the decision to stay the proceedings (causing a delay of two years and ten months) pending the Supreme Administrative Court's ruling on the application to set aside the expropriation decision. The stay had been lifted on 18 January 1995 at the request of the District Office Director.

50. With regard to the proceedings before the Łomża Regional Court (see paragraph 19 above), the Government emphasised how quickly the applicant's appeal of 20 November 1995 had been dealt with, with the decision falling as early as 1 February 1996.

51. As to consideration of the appeal on points of law lodged on the applicant's behalf by the Minister of Justice on 3 October 1996 (see paragraph 21 above), the Government pointed out that this too had been dealt with promptly: the Supreme Court had given its ruling on 29 October 1996, less than one month after the Minister had lodged the appeal.

52. Regarding the conduct of the proceedings before the Łomża District Court, after the case had been remitted to it following the Supreme Court's judgment (see paragraph 22 above), the Government did not dispute the fact that the two stays of proceedings ordered on 24 June 1997 and 14 December 1998 had delayed the hearing on the merits by some two years and eight months. They pointed out, however, that the stays had been justified by objective circumstances for which the judicial authorities could not be held responsible.

53. The applicant disputed the Government's arguments. He pointed out that a number of the hearings scheduled to take place before the Łomża District Court had not been held because the representative of the Treasury had been absent whereas the applicant had made the journey from his home, some 200 km away.

#### *4. The Court's conclusion*

54. The Court notes that the repeated stays of proceedings were the main cause of the delay complained of. It cannot, however, disregard the general context of the case, particularly the conduct throughout the proceedings under consideration of the regional police authority, which did everything it could to delay the restitution of the property (see paragraphs 11, 15, 17, 18 and 29 above). Although there may be objective factors which would justify a stay of proceedings, the proceedings instituted directly by the police authority or at its instigation in the instant case (see paragraph 29 above) were intended solely to put off the moment when the property would be restored to the applicant.

55. The Court attaches particular importance to the principle enunciated in its case-law that it is for the Contracting States to organise their legal

systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII).

56. Consequently, having regard to all the circumstances of the case, particularly the State's conduct, the Court considers that the length of the proceedings complained of exceeded what was reasonable.

There has therefore been a violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

57. The applicant complained of an infringement of his right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1, which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

This provision comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not “distinct” in the sense of being unconnected: the second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

58. The Court observes moreover that it has jurisdiction as regards Article 1 of Protocol No. 1 only for facts occurring after 10 October 1994, the date on which Poland ratified the Protocol. In its assessment, it will, however, take account of events occurring prior to that date.

### A. Whether there was a “possession”

59. The Government refused to accept that the applicant was the owner of the property. In their opinion, the fact that the case concerning the

application for acquisition of title to the property through adverse possession was still pending before the Polish courts called the legal status of the property into question. The Government also expressed doubts as to whether the applicant's father could legitimately be regarded as the owner, firstly since the land register of the time of the sale of the property in 1937 had been destroyed during the Second World War, and secondly because there was lingering uncertainty about the circumstances in which the sale of the property and its purchase by the applicant's father had taken place in the period between 1937 and 1939.

60. The Government submitted moreover that Article 1 of Protocol No. 1 was not applicable in the instant case. They pointed out that, at the time of the expropriation in 1952, the State had been exercising its sovereign prerogatives ("*imperium*"). Since the setting aside of the expropriation decision in 1992 the State had acted only as one of the parties in a civil law relationship ("*dominium*"). The Government submitted that although the administrative decision quashing the expropriation had re-established the status of the property in 1952 it had not given the applicant title to the property. At no time had the applicant and his sister proved that they were the sole inheritors with any claim over the object in dispute.

61. Referring to the Court's case-law on the subject, the Government observed that Article 1 of Protocol No. 1 applies only to a person's existing possessions, that the applicant must be able to prove that he has a legitimate expectation of exercising his property rights and that the Convention does not guarantee the right to become the owner of a property (see the following judgments: *Marckx v. Belgium*, 13 June 1979, Series A no. 31; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, Series A no. 301-B; and *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII).

62. The applicant claimed to be the owner of the property. He derived his title from the decision of the Land Registry Division of the Municipal Court on 26 June 1950 (see paragraph 8 above), in which his father, B. Zwierzyński, was clearly identified as the owner of the property. He pointed out that only an owner could be expropriated and that the expropriation decision had identified his father as the owner of the expropriated property and awarded compensation to him. According to the applicant, the setting aside of the expropriation decision with retrospective effect had re-established the situation prior to 1952.

The applicant also pointed out that on 8 July 1998 the Łomża District Court had recognised his status as heir, particularly as regards the property in issue, thus enabling him to take over his father's property rights.

63. The Court points out that the concept of "possessions" in Article 1 of Protocol No. 1 has an autonomous meaning (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). Consequently, the issue that needs to

be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant a substantive interest protected by Article 1 of Protocol No. 1, having regard to the relevant points of law and of fact.

64. The Municipal Court decision of 26 June 1950 (see paragraph 8 above) proves conclusively that the applicant's father was considered by the authorities of the time as the owner of the property in issue. The Court agrees with the applicant's argument that only an owner could be expropriated. It also notes that the decision of the Supreme Administrative Court of 23 November 1993 restored the applicant's father's title to the property with retrospective effect (see paragraph 13 above). As regards the applicant himself, the Court observes that on 21 June 1994 the Olsztyn District Court recognised him as the owner of the property when dividing up his parents' estate (see paragraph 14 above), and that that decision was upheld by the Olsztyn District Court on 8 July 1998 (see paragraph 26 above) despite the regional police authority's attempts to call his right into question (see paragraphs 22-25 above). The Court further notes that when conducting the negotiations for the sale or rent of the property (see paragraph 17 above), after the applicant had been listed in the Land Register (see paragraph 16 above) and while the application for acquisition of title to the property through adverse possession was pending, the authorities treated the applicant as the owner of the property. It observes that the proceedings brought subsequently do not cast any doubt on the applicant's status as the owner of property within the meaning of the Convention.

65. Lastly, the Court notes that the applicant regularly pays the rates and property taxes in respect of the disputed property (see paragraphs 15 and 17 above).

66. This being so, it considers that the applicant had a "possession" within the meaning of the Convention.

## **B. Whether there was interference**

67. The Court considers that there has been a clear interference with the applicant's right to peaceful enjoyment of his possessions in that the regional police authority continues to occupy the premises despite the fact that an administrative decision retrospectively restored the title to the property to the applicant's father, whose estate the applicant inherited, and on account of the actions brought directly or implicitly by the current occupier.

It must therefore determine whether the interference complained of is justified under Article 1 of Protocol No. 1.

### C. Whether the interference was justified

68. The Court must begin by establishing whether the interference in question amounted to a formal deprivation of the disputed property, a measure encompassed within the power to control the use of property granted to the States by the second paragraph of Article 1 of Protocol No. 1, or a deprivation of property covered by the second sentence of the first paragraph of that Article.

69. The Court points out that in determining whether there has been a deprivation of possessions, it is necessary not only to consider whether there has been a formal taking or expropriation of property but to look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are “practical and effective”, it has to be ascertained whether the situation amounted to a *de facto* expropriation (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 24-25, § 63, and *Brumărescu*, cited above, § 76).

70. The Court notes that the effect of the Supreme Administrative Court’s judgment of 23 November 1993 was retrospectively to restore the title to the property to the applicant’s father, whose estate was inherited by the applicant following the decision of 8 July 1998 in which his status as heir was conclusively recognised. Since the Supreme Administrative Court’s decision, the State authorities have done all they can to delay the restitution of the property (see paragraph 54 above). All the proceedings instituted directly or indirectly by them have resulted in infringements of the applicant’s right to peaceful enjoyment of his possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

71. A deprivation of possessions within the meaning of this sentence can only be justified if it is shown to be “in the public interest” and “subject to the conditions provided for by law”. Moreover, any interference with the property must also satisfy the requirement of proportionality (see *Brumărescu*, cited above). The Court reiterates that an interference must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38). The requisite balance will be upset if the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, pp. 26-28).

72. The Court can find no justification for the situation in which the public authorities have placed the applicant. It cannot discern in the present

case any genuine “public interest” that would justify a deprivation of possessions.

73. The Court points out that where an issue in the general interest is at stake it is incumbent on the public authorities to act in an appropriate manner and with the utmost consistency (see *Beyeler*, cited above). Moreover, as the guardian of public order, the State has a moral obligation to lead by example and a duty to ensure that the bodies it has charged with the protection of public order follow that example.

74. In the instant case, the Court considers that the “fair balance” referred to above has been upset and that the applicant has borne and continues to bear an individual and excessive burden.

It finds therefore that there has been a violation of Article 1 of Protocol No. 1.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

#### A. Damage

76. In respect of pecuniary damage, the applicant claimed the sum of 7,533,000 zlotys (PLN) for loss of profits caused by the fact that he was unable to enjoy his possessions.

He explained that his claim related to the period of ninety months – from 24 November 1992 to 23 May 2000, the date of the hearing before the Court – during which he had been denied the enjoyment of his property. When calculating the above sum he took account of the surface area of the property (837 sq. m) and a document – submitted to the Court – drawn up by an estate agency in the town in which the property is located which assesses the rental cost of commercial premises in the town centre at PLN 100 per square metre. He then multiplied the surface area by the cost per square metre and the number of months during which he was denied the enjoyment of his property.

77. The Government pointed out at the outset that the question of whether the applicant had any title to the property had not been settled by the Polish courts as the action brought by the heirs of the owner of the property prior to 1939 to reopen the proceedings concerning the division of the applicant’s father’s estate was still pending. They also pointed out that the period to be taken into consideration to calculate any damage that may

have been incurred as the result of a violation of Article 1 of Protocol No. 1 could only begin on 10 October 1994, when Poland had ratified that Protocol. They also submitted that the sum claimed by the applicant was excessive and pointed out that he should begin by filing a claim for damages with the Polish courts.

On the other hand, the Government stated that they were prepared to pay compensation for the excessive length of the proceedings, albeit without specifying a sum.

78. As regards Article 6 § 1 of the Convention, the Court accepts that the applicant must have suffered non-pecuniary damage which is not sufficiently compensated by the finding of a breach. Ruling on an equitable basis, it awards the applicant PLN 15,000 in that respect.

79. As to Article 1 of Protocol No. 1, the Court considers that in the circumstances of the case the issue of the application of Article 41 is not ready for decision. In view of the violation that has been found of Article 1 of Protocol No. 1, the most appropriate form of redress in the present case would be restitution of the property in issue by the State, coupled with compensation for the pecuniary damage sustained, such as the loss of enjoyment, and compensation for non-pecuniary damage (see *Belvedere Alberghiera S.r.l. v. Italy* [GC], no. 31524/96, § 69, ECHR 2000-VI). Consequently, it is necessary to reserve this issue and to fix the further procedure within six months of the date of the present judgment, having regard to any agreement that may be reached between the respondent State and the applicant (Rule 75 § 1 of the Rules of Court).

## **B. Costs and expenses**

80. The applicant, who was not in receipt of legal aid from the Council of Europe, claimed the reimbursement of PLN 62,650 for costs incurred in the course of the proceedings before the Polish courts and before the Commission and the Court. He gave a detailed breakdown of those costs.

81. The Government considered that the costs claimed by the applicant for the entire length of the proceedings in the Polish courts were not all relevant to the proceedings before the Court.

82. Ruling on an equitable basis, the Court awards the applicant PLN 25,000 for his costs and expenses, together with any value-added tax that may be chargeable.

## **C. Default interest**

83. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 30% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
    - (i) PLN 15,000 (fifteen thousand zlotys) in respect of non-pecuniary damage resulting from the breach of Article 6 § 1 of the Convention;
    - (ii) PLN 25,000 (twenty-five thousand zlotys) in respect of costs and expenses, together with any value-added tax that may be chargeable;
  - (b) that simple interest at an annual rate of 30% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Holds* that as far as Article 1 of Protocol No. 1 is concerned the question of the application of Article 41 is not ready for decision; accordingly,
  - (a) *reserves* the said question;
  - (b) *invites* the Government and the applicant to notify the Court, within six months of the date of this judgment, of any agreement that they might reach;
  - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French, and notified in writing on 19 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY  
Deputy Registrar

Wilhelmina THOMASSEN  
President