CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF POTOCKA AND OTHERS v. POLAND

(Application no. 33776/96)

JUDGMENT

STRASBOURG

4 October 2001

FINAL

27/03/2002

In the case of Potocka and Others v. Poland,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr V. BUTKEVYCH,
Mr M. PELLONPÄÄ,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 June and 13 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 33776/96) 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 four Spanish nationals, Pelagia-Maria Potocka, Piotr Potocki-Radziwiłł, Dorota Potocka-Radziwiłł and Anna Potocka, the second of whom also has Polish nationality, and Izabela d'Ornano who has French and Polish nationality ("the applicants"), on 18 December 1995.

2. The applicants were represented before the Court by Ms C. Imbach, a lawyer practising in Strasbourg. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, under Article 6 § 1 of the Convention that they did not have access to a court, as the Supreme Administrative Court, which was competent to deal with their case, did not have full jurisdiction on questions of fact and law. In addition, that court's jurisdiction was limited to cases concerning administrative proceedings instituted after a certain date.

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

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. In a decision of 6 April 2000 the Chamber declared the application partly admissible [*Note by the Registry.* The Court's decision is obtainable from the Registry].

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In 1947 Roman Potocki, acting on behalf of his brother Józef, lodged an application under Article 7 of the Decree of 26 October 1945 on real property in Warsaw for temporary ownership of two plots of land located in Krakowskie Przedmieście Street, Warsaw, to be awarded to Józef Potocki, the former owner. This application remained unanswered.

8. On 3 December 1990 the Warsaw District Court declared that the estate of Józef Potocki had been inherited, pursuant to the relevant provisions of the Polish Civil Code, by his wife Pelagia-Maria Potocka for four sixteenths, and by each of his children, Piotr Potocki-Radziwiłł, Anna Potocka, Dorota Potocka-Radziwiłł and Izabela d'Ornano, for three sixteenths.

9. On 20 December 1990 the second applicant lodged a request with the Governor of Warsaw for restitution of the two plots, indicating that they were listed in the Warsaw Land Register under nos. 415 and 9048.

10. By a decision of 5 August 1991 the Director of the Warsaw District Office discontinued the administrative proceedings relating to the applicants' request of 20 December 1990.

11. On 8 September 1991 the Warsaw Regional Office quashed the decision to discontinue the proceedings. It stated that it had been established during the proceedings that the plots concerned were situated in Warsaw. By virtue of the Decree on real property in Warsaw of 26 October 1945, all real property situated in Warsaw had been expropriated. However, under Article 7 of that decree, former owners had a right to lodge an application for temporary ownership of their plots. The authorities competent to deal with these applications could award temporary ownership if it was established that the plots concerned had not been designated for public use and that the award would not be incompatible with such use. In the applicants' case, such an application had been lodged in 1947, but it had remained unanswered. The first-instance administrative authority, when dealing with the applicants' request of 20 December 1990, had overlooked that fact. When reconsidering the case, that authority was required, in particular, to examine whether granting the applicants the right to perpetual use of the plot under the Land Administration and Expropriation Act of 1985, the provisions of which had replaced the procedural rights afforded to

former real-property owners by Article 7 of the 1945 decree, would conflict with the public use of the plots concerned, as determined in relevant local land-development plans.

12. On 27 December 1991 the Director of the Warsaw District Office refused to return the plots to the applicants and to grant them the right to their perpetual use. He stated that it had been established during the proceedings that in 1947 the applicants' predecessor in title had submitted an application for temporary ownership of the plots, which had then been listed in the Warsaw Land Register under entries nos. 415 and 9048. This application had remained unanswered, but the administrative authority had duly examined it in the course of the current proceedings. It was established that the palace built on the plots had been destroyed at 70 to 75% during the Second World War, as was pointed out in a letter of the Regional Conservator of Historical Monuments of 28 November 1991. The palace had subsequently been rebuilt by the Ministry of Culture. Thus it had been the State Treasury which had borne the costs of rebuilding the palace. Accordingly, restitution of the property concerned would have been unjustified, and the administrative authority found no grounds on which the 1947 application and the request lodged by the applicants in 1990 should be granted.

13. The applicants lodged an appeal against that decision. They argued that the decision was not in conformity with the applicable laws, in particular as the first-instance authority had failed to establish beyond reasonable doubt that the palace had indeed been destroyed during the Second World War. They also complained that no sound arguments had been advanced in the decision to show that restitution of the property to the applicants would be incompatible with its public use.

14. On 27 February 1992 the Governor's Office rejected the applicants' appeal, finding that it had been lodged one day after the expiration of the fourteen-day time-limit provided for in the Code of Administrative Procedure.

15. The applicants filed an appeal with the Supreme Administrative Court. They argued that the appeal had been posted on 20 January 1992, that is on the last day of the time-limit, as was shown by a post-office receipt. The fact that the postmark on the envelope was dated 21 January 1992 was due exclusively to the incomprehensible negligence of the postal services and could not be held against the applicants.

16. On 24 July 1992 the Supreme Administrative Court quashed the decision appealed against, considering that it was not established that the applicants had lodged their appeal against the decision of 27 December 1991 outside the time-limit provided for by the Code of Administrative Procedure, in particular because the applicants had submitted the post-office receipt to the court, showing clearly that their appeal had been posted on 20 January 1992.

17. On 9 September 1993 the Office of the Governor of Warsaw, having examined the applicants' appeal of 20 January 1992, upheld the decision of 27 December 1991. It pointed out that the administrative authority had established that the property of the applicants' predecessor-in-title had been designated by relevant land-development plans adopted in 1947, 1983 and 1992 for use by the Ministry of Culture and Arts. That designation had not been changed by any subsequent decision, as was certified by a letter of 19 August 1993 from the Director of the Land Administration Department of the Warsaw District Office. The Governor further held that the palace built on the plots had been destroyed at 70 to 75% during the Second World War, as was certified by a letter of the Regional Conservator of Historical Monuments of 28 November 1991. The palace had been rebuilt in the late 1940s by the Ministry of Culture and Arts. As it had been the State Treasury that had borne the rebuilding costs, it had acquired ownership of the property concerned. Moreover, at the time when Roman Potocki had lodged the application for temporary ownership, the buildings on the plot had not existed, as they had been destroyed. The administrative authority concluded that, in the light of the above considerations, granting the applicants the right to perpetual use would be unjustified.

18. On 12 October 1993 the applicants lodged an appeal with the Supreme Administrative Court against that judgment, complaining that the impugned decision was not in conformity with applicable substantive law. They first submitted that the decision was in breach of Article 7 of the 1945 decree in that the administrative authorities had failed to establish with sufficient clarity that the applicants' intentions as to the future use of the palace had not been compatible with the local land-development plan. The applicants emphasised that the authorities had disregarded their argument that they did not plan to alter the public nature of the palace. They had only wanted to reserve a small part of it for their exclusive use, whereas the remainder would be used for cultural and leisure purposes and would be accessible to the general public. Therefore, no issue arose, in fact, regarding the designation of the property for public use as its use was to remain unchanged. Moreover, the authorities had failed to indicate why the restitution of the property to the applicants would be incompatible with its continued public use.

19. The applicants further stressed that the authorities had failed to establish beyond reasonable doubt that the buildings on the plots had been destroyed during the Second World War and subsequently rebuilt by the State, and that they should therefore be considered the State's property. The findings made in this respect were superficial and based on insufficient evidence. The applicants emphasised in particular that the letter from the Regional Conservator of Historical Monuments of 28 November 1991 could not reasonably be regarded as credible, as the conservator operated under the supervision of the Ministry of Culture and thus could not be expected to

act against the ministry's interests. In view of that flaw, the authorities should have requested a report by an expert on construction technology in order to verify the information in the conservator's letter. In conclusion, the applicants requested that the decision under appeal should be set aside and that the case should be re-examined.

20. The applicants submitted that Articles 7, 8, 10, 12, 35 §§ 1 and 3, 75 § 1, 77 § 1, 78 § 1 and 107 § 3 of the Code of Administrative Procedure had been breached in the course of the proceedings and that those procedural shortcomings had had a bearing on the outcome of the case.

21. On an unspecified date a hearing was held before the Supreme Administrative Court in the appeal proceedings. The applicants' lawyer submitted that their application of 20 December 1990 was to be seen both as a reiterated application for temporary ownership, lodged in 1947, and as a new application for restitution of the property concerned and for having a right to perpetual use of the land awarded.

22. By a judgment of 22 June 1995 the Supreme Administrative Court rejected the applicants' appeal in so far as it concerned the application for temporary ownership, which had been submitted by Roman Potocki in 1947. In doing so, the court recalled that, pursuant to Article 14 of the Supreme Administrative Court Act of 31 January 1980, as amended, it was not competent to deal with appeals against administrative decisions given in cases in which proceedings had been instituted before 1 September 1980. Accordingly, the court could not review the lawfulness of that part of the contested second-instance administrative decision, given that the relevant proceedings had been instituted in 1947.

23. In so far as the decision under appeal concerned the applicants' application of 20 December 1990 for restitution of their former property and for the right to perpetual use of the land under the provisions of the Land Administration and Expropriation Act of 1985, the Supreme Administrative Court first considered that the authorities had failed to show why restitution of the property to the applicants would be incompatible with public use of the plot and the palace, and had therefore breached Article 107 § 3 of the Code of Administrative Procedure, under which an administrative authority, when issuing a decision, was required to point out the facts on which it had relied, to refer to evidence which had served as a basis for its factual findings, and to indicate the grounds on which other evidence had not been considered credible.

The court further considered that despite those procedural shortcomings the decision under appeal had, in any event, been lawful. The court noted that the crux of that part of the case was to assess whether the applicants could, under the Land Administration and Expropriation Act of 1985, claim to have a right to perpetual use of the plots concerned conferred on them by way of compensation for the expropriation carried out under the 1945 decree.

The court observed that under section 82(2) of the Land Administration and Expropriation Act, a right to perpetual use of land could only be conferred in cases where real property was given back to its former owners. However, that entitlement had been limited to certain categories of real property, namely one-family houses or small apartment blocks. The property concerned in the present case did not belong to any of those categories. Moreover, the 1985 Act had laid down a time-limit for the submission of such claims, and that limit had expired on 31 December 1988. The applicants' application of 20 December 1990 to have their former property restored to them and for the right to perpetual use of the property had been lodged outside that time-limit. Accordingly, the restitution could not have been ordered. The Supreme Administrative Court therefore dismissed the remainder of the applicants' appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Expropriation of property situated in Warsaw and the current status of such property

24. The Decree of 26 October 1945 on real property in Warsaw expropriated real property situated in Warsaw and transferred ownership to the municipality of Warsaw.

25. Pursuant to section 33(2) of the Local State Administration Act of 20 March 1950, ownership of property situated in Warsaw was assigned to the State Treasury.

26. The Local Self-Government Act of 10 May 1990 re-established local self-government. Pursuant to section 5(1), ownership of land which had previously been held by the State Treasury and which had been within the administrative territory of municipalities at the relevant time was transferred to the municipality.

B. Entitlement to compensation under the Decree on real property in Warsaw

27. Under Article 7 of the 1945 decree, former owners had the right to lodge an application for temporary ownership of their plots (*własność czasowa*). The authorities competent to deal with such applications first had to examine whether the plots concerned had not been designated for public use. If they considered that granting temporary ownership to former owners would not be incompatible with public use, a decision could be made in favour of the former owner.

28. The Land Administration and Expropriation Act was enacted in 1985. Under section 82(2) of that Act, former owners of real property were

entitled to apply for restitution of property which had been expropriated and to claim the right to perpetual use of the property. However, that entitlement was limited to certain categories of real property, namely one-family houses or small apartment blocks. Moreover, this Act laid down a time-limit for such claims. That limit expired on 31 December 1988.

C. Right to perpetual use of land

29. The right to perpetual use of land owned by municipalities is regulated in Book Two of the Civil Code (*Property and other rights* in rem*, Title two: Right to perpetual use*). It follows from the relevant provisions that this right consists in an entitlement to exclusive use, by a natural or legal person, of land owned by a municipality or by the State for ninety-nine years against annual payment of certain rates. A person having such a title can construct buildings on the land, of which he will be the owner. An administrative decision by a municipality to confer the right to perpetual use on a given individual is necessary and sufficient for a final contract to this effect to be concluded between the parties. The contract between the municipality and the perpetual user must be in the form of a notarial deed. A right to perpetual use can be sold or bequeathed.

D. Administrative proceedings by which a final administrative decision can be declared null and void

30. Under Polish law no special provisions have been enacted whereby redress may be obtained for wrongs relating to expropriations carried out within the framework of the agrarian reforms. There is therefore no specific legal framework to mitigate the effects of certain infringements resulting from the deprivations of property. However, persons whose property was expropriated, or their legal successors, may institute administrative proceedings under Article 155 of the Code of Administrative Procedure, in order to claim that the expropriation decisions should be declared null and void as having been in breach of the laws laying down criteria for expropriation, as applicable at the material time. If it is established that the contested decision was contrary to the legislation applicable at the time of the expropriation, the administrative authority shall declare it null and void. Administrative decisions may ultimately be appealed against in the Supreme Administrative Court.

E. The scope of judicial review by the Supreme Administrative Court

31. Under Article 7 of the Code of Administrative Procedure, in administrative proceedings the competent authorities take all measures necessary to make detailed findings of fact, having due regard to the public interest and to justified individual interests. According to Article 8, they are obliged to conduct proceedings in such a manner as to strengthen the confidence which citizens are entitled to have in the State authorities.

32. Article 10 of the Code requires the administrative authorities to ensure that the respective parties to the proceedings have an opportunity to participate actively therein, to adopt, before a decision is given, a position concerning the evidence gathered in the case and other material in the case file, and to submit comments on their own claims.

33. According to Article 75 § 1 of the Code, any lawful material which could serve as a basis for factual findings is admissible as evidence in administrative proceedings. In particular, documents, witnesses' testimonies, expert reports and inspections may be so admitted. Under Article 78 § 1 of the Code, a request to take evidence should be allowed, if the circumstances which are to be established are relevant to the decision to be given.

34. Article 196 § 1 of the Code of Administrative Procedure, as applicable at the material time, provided that an appeal on points of law against an administrative decision could be lodged with the Supreme Administrative Court. Article 207 § 2 stated that the court should set the decision aside wholly or in part if it established that the decision was in breach of substantive law or that the proceedings leading to the decision had contained a flaw which made the decision null and void, or that procedural shortcomings in the proceedings were such as to justify the re-opening of the latter.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicants submitted that they did not have access to a court, as the Supreme Administrative Court, which was competent to deal with their case in respect of their compensation claims under the Decree of 26 October 1945 on real property in Warsaw and subsequent relevant legislation, did not have full jurisdiction to examine issues of law and fact. They further submitted that the jurisdiction of that court was also subject to a temporal limitation. The applicants alleged a violation of Article 6 § 1 of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Temporal limitation of the Supreme Administrative Court's jurisdiction

36. The applicants submitted that the Supreme Administrative Court had not been able to examine their 1947 application for temporary ownership, because under the provisions of the Supreme Administrative Court Act it only had jurisdiction to hear cases concerning administrative proceedings which had started after it had come into existence, that is after 1 September 1980. Consequently, the application which Roman Potocki had submitted in 1947 had not been examined at all as the court did not have jurisdiction *ratione temporis*.

37. The Government submitted in that connection that under section 14 of the Supreme Administrative Court Act of 31 January 1980, no appeal to that court lay either against administrative decisions given before 1 September 1980, or against administrative decisions issued after that date in proceedings which had commenced before 1 September 1980. As a result, the applicants' appeal against the second-instance administrative decision of 9 September 1993 had to be rejected.

38. The Government submitted that the *ratio legis* of section 14 of the Act had obviously been to prevent judicial review of acts and events that had occurred before the Supreme Administrative Court was created. Such a limitation could not be regarded in itself as incompatible with the rule of law and was frequently applied in the legislative practice of democratic States, as well as before the organs of international systems for the protection of human rights.

39. The Court notes at the outset that Poland recognised the competence of the European Commission of Human Rights 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". According to Article 6 of Protocol No. 11 this limitation remains valid for the jurisdiction of the Court under that Protocol.

40. The Court observes that the legislation relevant to the present case, namely the Supreme Administrative Court Act, came into force on 1 September 1980. It provided unequivocally that judicial review was not available in cases where administrative proceedings had been instituted before that date. The final judgment of the Supreme Administrative Court in the applicants' case was delivered on 22 June 1995. In that judgment the court rejected the applicants' appeal against the decision of 9 September 1993 in so far as that appeal could be regarded as a reiteration of the application lodged in 1947. It pointed out that section 14 of the 1980

Supreme Administrative Court Act expressly excluded the possibility of examining appeals against any administrative decisions issued in proceedings launched before 1 September 1980.

41. The Court observes that the legislation concerned was enacted prior to the date on which its jurisdiction to examine individual applications against Poland took effect. Therefore, even supposing that the fact that judicial review was impossible in respect of the proceedings by which the applicants had unsuccessfully sought compensatory entitlements available under Article 7 of the 1945 Decree on real property in Warsaw might indeed raise an issue under Article 6 of the Convention, the applicants would have become victims of that state of affairs on 1 September 1980, when the relevant provisions of the Supreme Administrative Court Act came into force.

42. Consequently, the Court considers that it was the legislation in force at that time which deprived the applicants of their right of access to a court. The subsequent decision of the Supreme Administrative Court merely highlighted the aforementioned impossibility (see *Kefalas and Others v. Greece*, judgment of 8 June 1995, Series A no. 318-A, pp. 19-20, § 45). Therefore, on account of the conditions specified in the Polish declaration acknowledging the right of individual petition, this part of the case lies outside the Court's jurisdiction *ratione temporis*.

B. Scope of the Supreme Administrative Court's jurisdiction

43. The applicants complained that they had not had access to a court as required by Article 6 of the Convention. They argued that the Supreme Administrative Court did not have full jurisdiction over questions of fact and law in respect of the part of the proceedings which concerned their application lodged in 1990. This was so since under Polish law the court was only able to examine the lawfulness of the decision under appeal and could not consider any other aspects of the case, such as questions of facts and of expediency.

44. The applicants emphasised that the administrative authorities had been required to consider whether private use of the property concerned, if it were returned to the applicants, would be compatible with the designation of the land in question as defined in the land-development plan. The authorities had failed to do so. The applicants referred in that connection to the statement made in the judgment of the Supreme Administrative Court confirming that the authorities had failed to establish whether the restitution of property to the applicants would be incompatible with public use of the palace. They further relied on the court's statement that the authorities, contrary to Article 107 § 3 of the Code of Administrative Procedure, had fallen short of their obligation to analyse the facts of the case in the light of the applicable laws, having made a superficial assertion that the applicants'

claim was unfounded. That statement by the court, in the applicants' submission, shed light on the core issue of the case, namely that the competent administrative authorities, when refusing to allow their application, had interpreted the applicable laws arbitrarily and to the detriment of the applicants.

45. The applicants further asserted that in its judgment of 22 June 1995 the Supreme Administrative Court had accepted erroneous administrative decisions and that it had done so for purely technical reasons. Their application submitted in 1990 had not been examined in detail, as a thorough examination had not been possible under the law defining the scope of the Supreme Administrative Court's jurisdiction. As a result, wrong decisions of the administrative authorities remained in force.

46. The applicants also argued that the administrative court was unable to carry out a full examination of their appeal against the decision of 9 September 1993. They drew the Court's attention to the fact that the Government had submitted that in certain areas of public policy, limitations on judicial review of administrative decisions should be considered legitimate. They disagreed with this line of reasoning.

47. The Government first argued that the Supreme Administrative Court satisfied all the requirements of a "tribunal" within the meaning of Article 6 of the Convention. They asserted that in the case under consideration the scope of judicial review, limited under the applicable domestic legislation to ensuring that the administrative authority had not acted illegally, unreasonably and unfairly, was sufficient for the purposes of Article 6 of the Convention. The Supreme Administrative Court was competent to examine whether there had been a breach of substantive law in the proceedings giving rise to the contested decisions and was required, in doing so, to review the merits of the applicant's case as well.

48. The Government submitted that the applicants' complaint had to be examined with due regard to the nature of their claims. It referred to the factual circumstances in *Zumtobel v. Austria* (judgment of 21 September 1993, Series A no. 268-A) and emphasised that the applicants' complaint had been similar to that lodged in *Zumtobel*, in which the Court had examined the applicability of Article 6 in administrative decision-making. The Government stressed that in certain areas there were justified policy considerations suggesting that final administrative decisions on the merits should rest with the executive rather than a judicial authority, despite the impact such a decision might have upon an individual's civil rights and obligations. It argued that the approach adopted by the Court in *Zumtobel* allowed for the conclusion that certain restrictions on the requirement that administrative courts should have full jurisdiction were acceptable in cases where policy considerations applied.

49. The Government further relied on the Convention organs' case-law according to which no infringement of Article 6 had been found in a case

where the only judicial remedy available to the applicants in respect of an alleged interference with their property rights had been an application to the English High Court, which did not encompass a full right of appeal on law and facts (see *Kaplan v. the United Kingdom*, no. 7598/76, Commission's report of 17 July 1980, Decisions and Reports 21, p. 5). It was further stated in that case that it was not the role of Article 6 to guarantee access to a court which could substitute its opinion for that of the administrative authorities on questions of expediency, if that court did not refuse to examine any points raised by the applicant.

50. The Government emphasised that an interpretation of Article 6 § 1 to the effect that it provided for a right to a full appeal on the merits of every administrative decision affecting private rights would lead to a result which would be inconsistent with the existing, and long-standing, legal position in most of the Contracting States in respect of the judicial review of such decisions.

51. The Government accordingly concluded that there had been no violation of the applicants' right of access to a court.

52. The Court recalls that in *Zumtobel* (cited above, pp. 13-14, §§ 31-32) it found that the Austrian Administrative Court fulfilled the requirements of Article 6 § 1 of the Convention in matters which were not exclusively within the discretion of administrative authorities and where the Administrative Court considered the submissions on their merits point by point, without ever having to decline jurisdiction in replying to them or in ascertaining various facts.

53. This approach was confirmed in *Bryan v. the United Kingdom* (judgment of 22 November 1995, Series A no. 335-A, p. 17, §§ 44-45). There the Court found no violation of Article 6 § 1 of the Convention, although the appeal to the High Court lodged by Mr Bryan against an enforcement notice, being on "points of law", was not capable of embracing all aspects of the impugned administrative decision. In particular, there was no rehearing, as such, of the original complaints submitted to the inspector; the High Court could not substitute its own decision on the merits for that of the first-instance administrative authority, and its jurisdiction over the facts was limited. The Court found that, in assessing the sufficiency of the review available, it was necessary to have regard to, *inter alia*, the subject matter of the decision under appeal, the manner in which that decision was arrived at, and the content of the dispute, including the grounds of appeal.

54. It is now for the Court to examine whether in the present case the Supreme Administrative Court satisfied the requirements of Article 6 § 1 as far as the scope of its jurisdiction was concerned. The Court should confine itself as far as possible to examining the question raised by the case before it. Accordingly, it should only decide whether, in the circumstances of the case, the scope of the jurisdiction of the Supreme Administrative Court as

exercised by that court in its review of the contested administrative decisions met the requirements of Article 6 § 1.

55. It is true that the scope of the Supreme Administrative Court's jurisdiction as determined by the Code of Administrative Procedure in the version applicable at the material time was limited, under its Article 196 § 1, to the assessment of the lawfulness of contested administrative decisions. This examination, however, was not confined to assessing whether the impugned decision was compatible with substantive law. The court was also empowered to set aside a decision wholly or in part if it was established that procedural requirements of fairness had not been met in the proceedings which had led to its adoption.

56. In the present case the court first examined, under Article 107 § 3 of the Code of Administrative Procedure, whether the administrative authorities, when ruling on the applicants' 1990 application, had complied with their procedural obligations as specified by the Code. Those obligations were, *inter alia*, to point out in their decision the facts on which they had relied and to refer to the evidence which had served as a basis for their findings. The court found that the administrative authorities had fallen short of these obligations by failing to give adequate reasons for their conclusion that returning the property to the applicants and granting them the right to perpetual use of it would not be compatible with the continued public nature of the property. In the Court's view, this reasoning of the Supreme Administrative Court shows that in fact it did examine the expediency aspect of the case, contrary to the applicants' argument that its examination of the case was strictly limited to points of law.

It should further be noted that the Supreme Administrative Court went on to state in its judgment that the decisions under appeal were in any event lawful, regardless of the fact that the examination of the applicants' application for restitution of the property had been superficial and consequently in violation of the procedural obligations laid down in the Code of Administrative Procedure. The court noted in that respect that the applicants' application lodged in 1990 was not in compliance with either the formal or the substantive requirements set forth in the domestic law. This was so, firstly, because it had been lodged after the time-limit prescribed by law. Secondly, the compensatory entitlements sought by the applicants could not be granted in any event as the property did not belong to the category for which such entitlements were guaranteed by the applicable law, namely, the Land Administration and Expropriation Act of 1985. Consequently, the court ruled that there were no grounds on which the contested decisions could be set aside as, in the final analysis, the rejection of the applicants' application had been lawful.

57. As to the Supreme Administrative Court's powers to examine factual issues, the Court observes that the extensive reasoning given by that court in its judgment shows that it considered all the applicants' submissions on

their merits, point by point, without ever having to decline jurisdiction in replying to them or in ascertaining the relevant facts. It also notes that the Supreme Administrative Court did so even though it could have limited its analysis to finding that the contested decisions had to be upheld in the light of the procedural and substantive flaws of the 1990 application.

58. To sum up, the Court observes that the Supreme Administrative Court had regard, first, to the expediency aspect of the case and criticised the administrative authorities, under the head of procedural fairness, for their failure to conduct a detailed examination of the applicants' submissions in respect of their claim to the right of perpetual use of the property in issue. That court further examined the lawfulness of the contested decisions and found them lawful, having regard to the fact that the 1990 application did not satisfy either the formal or the substantive criteria set by the applicable laws. It delivered a judgment which was carefully reasoned, and the applicants' arguments relevant to the outcome of the case were dealt with thoroughly.

59. In view of the foregoing, the Court considers that the scope of review of the Supreme Administrative Court was sufficient to comply with Article 6 § 1. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the case lies outside the Court's jurisdiction *ratione temporis* in so far as it concerns the complaint about the alleged lack of effective access to a court in respect of the proceedings instituted by the applicants in 1947;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention with regard to the applicants' complaint about the alleged lack of effective access to a court in respect of the proceedings instituted in 1990.

Done in English, and notified in writing on 4 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President