CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF SKRZYŃSKI v. POLAND

(Application no. 38672/02)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of Skrzyński v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 July 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 17373/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Piotr Skrzyński ("the applicant"), on 15 April 2002. The applicant was represented by Mr Adam Bodnar of the Helsinki Foundation of Human Rights.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to the peaceful enjoyment of his property had been breached since the land which he owned had been designated for expropriation at some undetermined future date. Under domestic legislation he was not entitled to any compensation for the interference with his ownership rights resulting from the future expropriation.

4. On 17 October 2006 the Court decided to give notice of the application. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Milanówek.

6. Since 1991 the applicant has owned a plot of land located in the municipality of Milanówek, near Warsaw. It is listed in the local land register under entry no. 31737.

7. Under the local land development plan adopted in 1981, which was in force in 1991 when the applicant acquired the land concerned, it was situated in an area described as "the agricultural area without the right to construction, reserved for a future zone designated for recreational purposes". The 1981 plan remained in force until 1993.

8. On 30 March 1993 the Municipal Council of Milanówek, in a public procedure provided for by relevant planning legislation, adopted a resolution by which the local land development plan was accepted. The applicant's land was included in an area in which a ring-road and a hospital were to be constructed in the future.

9. The applicant and his neighbours lodged a complaint against the Council's resolution with the Mazowsze Governor, arguing *inter alia*, that the plan breached their right to the peaceful enjoyment of their possessions. They submitted that the local land development plan had been prepared in a manner which failed to take into consideration and to reconcile various interests of the municipality and the local owners. As a result, the plan which had been adopted was unreasonable and did not comply with standards of good land administration.

10. They were informed that the Supreme Administrative Court was competent to examine their complaint.

11. By a judgment of 25 September 1995 the Supreme Administrative Court dismissed the complaint, finding that there were no indications that the municipal authorities had failed to take into consideration and properly weigh the various competing interests involved in the preparation of the local land development plan. It noted that restrictions on ownership imposed by the land development measures were not *per se* incompatible with the nature of ownership as guaranteed by the Civil Code.

12. On 8 February 1999 the applicant requested that an initial approval for a development project on his land be issued.

13. On 27 March 2000 the applicant submitted to the Mayor of Milanówek a request that his land either be acquired by the municipality or that he be given another plot of land.

14. In a letter of 12 April 2000 the Municipal Office informed the applicant that his request of 8 February 1999 had not been examined as he had failed to submit an appropriate plan with it. He was further informed that the validity of the 1993 plan had been prolonged by Parliament for two more years, until the end of 2001.

15. On 12 May 2000 the Marshal of the Mazowsze Region informed the applicant that the construction of the roadway was undoubtedly in the interests of the inhabitants of Milanówek, but that no funding would be

provided for it in the financing scheme for the regional land development plan until at least 2010.

16. On 17 July 2000 the applicant renewed his request for an initial approval for a development project on his land. He wished to have a house built on it.

17. On 1 September 2000 the Mayor of Milanówek refused his request, finding that the project as submitted by the applicant was incompatible with the local land development plan.

18. The applicant appealed, submitting that there were no immediate plans to build the road, there was no financing earmarked for it in the relevant public budgets, and that his right to the peaceful enjoyment of his property had been breached by the continuing restrictions on the use of his land in view of its future expropriation at some undetermined point of time.

19. On 19 December 2000 the Local Government Board of Appeal dismissed the applicant's appeal on the ground that his construction project was incompatible with the land development plan for the municipality of Milanówek.

20. The applicant appealed to the Supreme Administrative Court, arguing that since the adoption of the 1993 plan he had been restricted in the use of his property; that the municipality had refused to acquire his land or to provide him with another plot; and that this amounted to a breach of his right to the peaceful enjoyment of his possessions as well as of various provisions of the Constitution. He stressed that under the applicable laws he did not have any right to compensation for the protracted restrictions on the exercise of his ownership.

21. In 2001 the applicant requested the municipality three times to either acquire his land or to grant him another plot. His requests were unsuccessful.

22. On 2 July 2002 the Supreme Administrative Court dismissed his appeal against the decision of 19 December 2000. The court observed that its jurisdiction was limited to the examination of the lawfulness of the impugned decision. It found that the decision was lawful as it was common ground between the parties that the applicant's construction project was incompatible with the local land development plan.

It further noted that the applicant had complained that his situation could not be seen as being compatible with the Constitution, given that owners affected by plans adopted prior to the Constitution's entry into force could not benefit from compensation claims provided for by section 36 of the 1994 Local Planning Law. The court referred to the judgment of the Constitutional Court given in 1995 (see paragraph 54 below). The Constitutional Court had examined the compatibility with the Constitution of section 68 § 1 of the Land Planning Act 1994 insofar as it excluded the application of the owners' right to compensation provided for in section 36

of that Act to land development plans adopted before 31 December 1994. It found that this provision was compatible with the Constitution.

The Supreme Administrative Court observed that it was not its task to amend or to criticise existing laws and that it was bound by this provision. Otherwise there were no grounds on which to consider that the decision challenged by the applicant was unlawful.

23. On 31 December 2002 the validity of the 1993 land development plan expired.

24. On 25 August 2003 the applicant was granted an initial planning permission (*decyzja o warunkach zabudowy*) and on 25 November 2003 a final building permission (*zezwolenie na budowę*).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Changes in land development legislation during the period concerned

25. From 1984 to 1 January 1995 questions of land development were governed by the Local Planning Act of 12 July 1984.

26. On 7 July 1994 a new Local Planning Act was enacted. It entered into force on 1 January 1995.

27. On 21 December 2001 Parliament passed a law amending the Local Planning Act 1994.

28. On 27 March 2003 a new Local Planning Act was enacted which repealed the 1994 Act.

29. Under the Local Planning Act of 12 July 1984 owners of properties to be expropriated in the future were not entitled to any form of compensation for damage resulting from restrictions on the use of their property or the reduction in its value originating in expropriations to be carried out at an undetermined future date.

30. Section 36 of the Local Planning Act enacted in 1994 created for local authorities a number of obligations towards owners whose properties were designated for expropriation at an undetermined future date under land development plans adopted by the competent municipal authorities. The municipalities were obliged to buy such property, replace it with other land within six months of an owner's request, or provide compensation for the damage caused by the designation.

31. However, pursuant to Section 68 § 1 of the Act, these obligations and the corresponding claims of the owners applied only to plans adopted after the Act had entered into force, i.e. to plans adopted by local municipalities after 1 January 1995.

32. Pursuant to the 1994 Act, plans adopted before its entry into force were to expire on 31 December 1999.

33. In 1999 an amendment to the 1994 Act was adopted under which the validity of such plans was extended for a further two years until 31 December 2001. Again, on 21 December 2001, Parliament passed a law amending the Local Planning Act 1994 which extended until the end of 2002 the validity of the land development plans adopted before 1 January 1995.

34. Under section 87 of the 2003 Act (see paragraph 27 above), all local plans adopted before 1 January 1995 remained valid, but not beyond 31 December 2003.

35. Compensation entitlements for owners, provided for by the 1994 Act (see paragraph 30 above), were in essence maintained by the 2003 Act. Pursuant to Section 36 of that Act, when, following the adoption of a new local land development plan, the use of property in the manner provided for by a previous plan has become impossible or has been restricted, it is open to the owner to claim compensation from the municipality, or to request the municipality to buy the plot. Any litigation which may arise in this respect between municipalities and owners can be pursued before the civil courts. It would appear that the operation of Section 36 is not retroactive, thus limiting the scope of any such claims to the period after the adoption of the 2003 Act.

36. Other relevant legislative provisions are extensively set out in the Court's judgment of 14 November 2006 in the case of *Skibińscy v. Poland* (no. 52589/99, §§ 28 - 53).

B. Judgments of the Constitutional Court

37. In its judgment of 5 December 1995 (K 6/95), the Constitutional Court examined the request submitted to it by the Ombudsman to determine the compatibility with the Constitution of section 68 § 1 of the Land Planning Act 1994 insofar as it excluded the application of section 36 of that Act to land development plans adopted before 31 December 1994. The court referred to its established case-law to the effect that ownership could not be regarded as *ius infinitivum*. Consequently, its exercise was normally restrained by many legal and practical considerations, including the necessity of balancing the owners' interests against those of other persons. Local land development plans were to be regarded only as a practical expression of restraints originating in numerous statutes regulating the lawful exercise of ownership. In particular, owners of properties “frozen” for the purpose of future expropriations as a result of the adoption of such plans could normally continue to use their properties as they had been using them prior to the adoption of such plans. This did not amount to such an

interference with ownership that it could be regarded as being incompatible with the constitutional protection of ownership.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

38. The applicant alleged that his right to the peaceful enjoyment of his possessions had been breached. He referred to Article 1 of Protocol No. 1 to the Convention, which reads:

> "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."

A. Admissibility

1. Incompatibility ratione temporis with the provisions of the Convention

39. The Government submitted that the alleged violation of the applicant's property rights had originated in the land development plan adopted in 1993. The application was therefore incompatible *ratione temporis* with the provisions of the Convention because the alleged violation had taken place before 10 October 1994, the date on which Poland ratified Protocol No. 1 to the Convention.

40. The applicant disagreed. He argued that in the context of a continuing violation of the right to the peaceful enjoyment of one's possessions the events that had taken place before the date of ratification should be taken into account as a relevant background for the assessment of the facts of the case. Moreover, in his case many facts had occurred after 10 October 1994 which should be regarded as giving rise to further breaches of his right guaranteed by Article 1 of Protocol No. 1 to the Convention. The applicant referred to the Court's judgment given in the case of *Skibińscy v. Poland* (no. 52589/99, 14 November 2006) concerning a similar set of facts

with the same legal background where the Court had been of the view that it had temporal jurisdiction to examine that case.

41. The Court's jurisdiction *ratione temporis* covers only the period after the date of ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I). Accordingly, the Court is competent to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 10 October 1994, the date of ratification of Protocol No. 1 by Poland. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, § § 147-153, ECHR 2006-...).

42. The Court further observes that the applicant's complaint is not directed against a single measure or decision taken before, or even after, 10 October 1994. It rather refers to a set of restrictions imposed on the exercise of his ownership and arising from various legal measures, adopted both before and after that date. The Government's plea of inadmissibility on the ground of lack of jurisdiction *ratione temporis* must accordingly be rejected.

2. Incompatibility ratione materiae with the provisions of the Convention

43. The Government submitted that the applicant had acquired in 1991 a plot which was of an agricultural character, without the right to build on it. Hence, he could not be said to have had any legitimate expectation that in the future he would be allowed to build on his plot. Under Polish law the authorities could not be required to permit agricultural land to be designated for construction purposes. In the present case the applicant could have had no more than a mere hope that he would acquire such a right.

44. The applicant disagreed.

45. The Court notes the Government's argument that under applicable laws the applicant had no right to build on the land concerned. However, it observes that the essence of the applicant's complaint relates to a set of restrictions on the exercise of his ownership, with particular emphasis on the lack of any right to compensation for the future expropriation of his land, a state of affairs which lasted for eight years (see paragraphs 65 – 69 below), rather than to the mere refusal of a building permit. It therefore rejects the Government's objection.

3. Exhaustion of domestic remedies

46. The Government argued that if the applicant had considered that the provisions on which the domestic decisions in his case had been based were incompatible with the Constitution, it would have been open to him to challenge these provisions by lodging a constitutional complaint under Article 79 of the Constitution. Thus, the applicant could have obtained the aim he sought to attain before the Court, namely an assessment of whether the contested regulations as applied to his case had infringed his rights guaranteed by the Convention. He should have lodged this complaint against the judgment of the Supreme Administrative Court of 2 July 2002 dismissing the applicant's appeal against the refusal of the initial planning permission. It was open to the applicant to challenge, by way of a constitutional complaint, section 68 § 1 of the Local Planning Act 1994 the operation of which was prolonged for further periods by the Acts of 22 December 1999 and 21 December 2001.

47. The Government further argued that the applicant should have lodged a civil action with a civil court, claiming damages against either the State Treasury or the municipality for the interference with his right to the peaceful enjoyment of his possessions. Had a civil court found against him, he could also have lodged a constitutional complaint with the Constitutional Court to challenge the provisions of the Local Planning Act 1994 which were applied to his case.

48. The applicant disagreed. He submitted that the provisions of civil law on the civil liability of public authorities were not applicable to his case because section 69 of the Local Planning Act 1994 expressly excluded the civil liability of public authorities for claims originating from interferences with property rights in connection with future expropriations.

49. As to the constitutional complaint, the applicant submitted that under the provisions of the Local Planning Act as adopted in 1994 he had had a legitimate expectation that the restrictions on his entitlement to compensation would expire on 31 December 1999. Nevertheless, the legislator subsequently decided, on two occasions, to prolong the duration of these restrictions. As a result, the restrictions complained of were applicable to the applicant's situation for an overall period of eight years.

50. The Court recalls that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court (*Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). The Court further reiterates that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-

exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (*Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

51. The Court has already dealt with the question of the effectiveness of the Polish constitutional complaint (*Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003; *Pachla v. Poland* (dec.), no 8812/02, 8 November 2005; *Wypych v. Poland* (dec.), no. 2428/05, 25 October 2005). It examined its characteristics and in particular found that the constitutional complaint was an effective remedy for the purposes of Article 35 § 1 of the Convention in situations where the alleged violation of the Convention resulted from the direct application of a legal provision considered by the complainant to be unconstitutional.

52. In the instant case, the Court notes that the essence of the applicant's complaint is that as a result of the expropriation to be carried out at a future undetermined date he was not entitled to compensation for a protracted period of uncertainty which was twice prolonged by the legislator. Likewise, he was not entitled to obtain land to replace the plot designated for expropriation. He did not have a claim against the municipality to make it acquire his property before the planned expropriation. Lastly, as a result of the decision given by the municipality, he was also prevented from pursuing any development projects on his property.

53. The Court further notes that the provisions of the Local Planning Act 1994 were examined by the Constitutional Court in 1995. That court held that they were compatible with the obligation of the State to protect private property laid down in the Constitution of 1952 (see paragraph 37 above). Moreover, the Supreme Administrative Court, in its judgment of 2 July 2000, based its reasons for dismissing the applicant's appeal against the refusal of the initial planning permission on this judgment.

54. Lastly, the Court observes that the applicant's requests to the municipality by which he sought to obtain compensation for the fact that his property had been “frozen” under the 1993 plan were refused (see paragraph 21 above). Under applicable provisions of domestic law a constitutional complaint in administrative proceedings is open only against a final decision issued by the administrative court. However, the authorities did not issue administrative decisions against which an appeal to the administrative court would lie. Hence, the Court considers that it has not been shown that in the circumstances of the case the constitutional complaint was available to him.

55. Having regard to the above considerations, the Court is of the view that the constitutional complaint cannot be regarded as an effective remedy in the applicant's case.

56. Insofar as the Government argued that the applicant should have claimed compensation before a civil court, the Court observes that under the provisions of the Land Planning Act 1994 the liability of public authorities for any damage which might have its origin in expropriation planned in the future was expressly excluded. Hence, this remedy did not offer any prospects of success.

57. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The Government's submissions

58. The Government first submitted that there had been no interference with the applicant's right to the peaceful enjoyment of his possessions. The plot bought by the applicant had originally been designated for agricultural purposes. Even if there had been no public investment planned for his plot, the applicant would not automatically have had the right to use it for housing construction, or to demand its designation for such purposes (*Allan Jacobsson v. Sweden*, no. 18/1987/141/195, 25 October 1989, § 60; *Matti and Marianne Hiltunen against Finland* (dec.), no. 30337/96, 28 September 1999). In 1991, when the applicant had acquired ownership of the land, the planned course of the new ring-road had already been known.

59. The Government argued that neither the provisions of Polish law nor of Protocol No. 1 imposed on the Polish authorities an obligation to change the character of use of land by individual owners. Under Article 1 of Protocol No. 1 States had a right to enforce such laws as they deemed necessary to control the use of property in accordance with the general interest. The applicant had bought a property designated for agricultural use and should have been aware that his ownership right had not encompassed the right to build a house on this land. He had been entitled to use or dispose of his plot only within the limits prescribed by the law, the principles of reasonable social co-operation and the socio-economic purpose of ownership. The applicant's situation was therefore different from that in the case of *Sporrong and Lönnroth v. Sweden* (judgment of 23 September 1982, Series A no. 52, § 11) in which the restrictions were imposed on the property in the centre of the capital.

60. The Government submitted that the measures complained of had pursued the legitimate aim of securing land in connection with the implementation of the local land development plan. As the Court acknowledged on many occasions, this corresponded to the general interest

of the community. The impugned measures had served the general interest as they had been intended to resolve the communications and environmental problems of the municipality of Milanówek.

61. The procedure for the adoption of the 1993 local development plan had involved local society in accordance with the 1984 Local Planning Act. All stages of the procedure had been public and the inhabitants of the municipality had been able to comment on the draft plan. The draft plans had been subject to consultation with the inhabitants, including the applicant. The objections raised by the owners concerned, including the applicant, had been carefully examined by various competent authorities and, in the last resort, in judicial proceedings before the Supreme Administrative Court.

62. The Government were of the opinion that in the present case the individual burden imposed on the applicant had not been excessive. He had not been prevented from either selling or leasing his property. It had remained possible for him to continue to use the property for agricultural purposes in the same way he had used it prior to the entry into force of the 1994 Act. Hence, the present case was different from the situation in which the Court had found a violation of Article 1 of Protocol No. 1 to the Convention in the case *Immobiliare Saffi v. Italy (*[GC], no. 22774/93, ECHR 1999-V) in that the applicant could freely enjoy his ownership.

63. The value of the applicant's plot and the scope of its use increased significantly as a result of the expiry of the 1993 local development plan after 31 December 2002 and following the entry into force of the 2003 Act. After that date the applicant acquired the possibility of using his plot for construction purposes (see paragraph 24 above).

64. The Government concluded that in the circumstances of the case a fair balance had been struck between the applicant's individual rights on the one hand and the public interest and transport needs of the local community on the other.

2. The applicant's submissions

65. The applicant was of the view that there had been a breach of his right to the peaceful enjoyment of his possessions since the land he had owned had been designated for expropriation at some undetermined future date. Under domestic legislation he was not entitled to any compensation for this interference with his ownership.

66. It was true that he had not been formally deprived of his possessions since he had remained the lawful owner of the land throughout the period covered by the present case. However, as a result of the planning measures taken in his case his property rights had been stripped of any economic significance. The fate of his land remained uncertain from 1994 until 2003.

While the 1993 local development plan had provided for the construction of a roadway through his plot, the date of its actual construction remained uncertain.

67. As to the Government's argument that the applicant could have tried to sell his land, he averred that such an approach entirely disregarded the fact that the market value of the plots had been significantly reduced as a result of the adoption of the 1993 plan and the consequential uncertain fate of the property affected by the future expropriation.

68. The applicant submitted that his request to be granted a construction permit had been refused. He acknowledged that Article 1 of Protocol No. 1 did not guarantee for an individual owner a right to demand that the public authorities designate his property to be used for specific purposes, including housing construction purposes. However, in the circumstances of the present case this provision should be regarded as obliging the public authorities to take measures to eliminate uncertainty surrounding the fate of the property and, in addition, to take into account, in the procedure leading to the adoption of the local land development plan, the interests and objections of the individual owners**.** It was unacceptable, in the light of this provision, to deprive the owner of the peaceful and unhindered enjoyment of his possession for such a long period.

B. The Court's assessment

1. General principles

69. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (in *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, among many other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

> "The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated 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 ... The three rules are not, however, "'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

2. Whether there was interference with the peaceful enjoyment of "possessions"

70. The Court must first examine whether there was interference with the peaceful enjoyment of the applicant's possessions.

71. The Court observes that the applicant's situation was affected by the local land development plan adopted by the municipality of Milanówek in 1993 because it provided for a future expropriation of his land. The Court first notes that the applicant's objections to the plan were dismissed (see paragraphs 9-11 above). The Court further emphasises that the applicant's situation was negatively affected not so much by the mere prospect of expropriation, but by the fact that this future expropriation was to be carried out at an undetermined point in time and in the absence of any indication, even approximate, as to its future date.

72. In that connection, the Court further notes that before the enactment of the Local Planning Act in 1994 the local authorities did not have any obligation to compensate owners of plots to be expropriated in the future. It was only by virtue of section 36 of that Act that local authorities became obliged either to buy plots designated for future expropriation under local land development plans, or to replace those plots by other plots, or to award the owners compensation for damage caused by the fact that their plots were designated for future expropriation. However, the right to compensation applied only to plans adopted after the 1994 Act had entered into force. Consequently, they were not applicable to the applicant's situation as the plan for the municipality had been adopted in 1993.

73. The Court further notes that the applicant was informed by the municipality that under the applicable legislation the municipality was not obliged either to acquire his property which was to be expropriated in the future and that he had no right to compensation for the fact that he could not freely use and dispose of his property in the light of the future expropriation (see paragraph 21 above). In addition, his request for an initial approval of a development project on his land was refused in 2001, with reference to the 1993 land development plan which was in force at that time.

74. To sum up, the measures complained of, taken as a whole, although in law they left intact the applicant's right to continue to use and dispose of his possessions, nevertheless in practice they significantly reduced the effective exercise of that right. The applicant's property was to be expropriated at some undetermined future date, without there being any provision for immediate compensation under the applicable laws. The applicant's right of property thus became precarious and defeasible (*mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, cited above, §§ 58-60; *Skibińscy v. Poland*, cited above, § 79).

75. The Court is therefore of the view that there was interference with the peaceful enjoyment of the applicant's possessions. The Court further considers that the measures complained of did not amount to expropriation.

Likewise, they cannot be regarded as control of use of property. Accordingly, the interference falls to be examined under the first sentence of Article 1 of Protocol No. 1.

3. Whether the interference was "provided for by law"

76. The Court recalls that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of someone's possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

77. The Court observes that the applicant's situation was affected by future expropriation for the purposes of the land development plan and by the lack of any effective entitlement to compensation.

78. The Court notes that the first two measures were taken on the basis of the Local Planning Act 1994. As to the applicant's situation regarding compensation, it was affected by the operation of specific provisions of that Act which, by prolonging the validity of the local development plan under the amendments to the Local Planning Act 1994, effectively deprived him of any possibility of obtaining redress for those measures (see paragraphs 30 - 33 above). The interference complained of was therefore "provided by law" within the meaning of Article 1 of Protocol No. 1 to the Convention.

4. Whether the interference was "in the general interest"

79. Any interference with a right of property, irrespective of the rule under which it falls, can be justified only if it serves a legitimate public (or general) interest. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX).

80. In the present case the Court accepts that already in 1994 the measures complained of pursued the legitimate aim of securing land in connection with the implementation of the local land development plan. This corresponds to the general interest of the community (see, *mutatis mutandis*, *Cooperativa La Laurentina v. Italy*, no. 23529/94, § 94, 2 August 2001; *Bahia Nova S.A.* (dec.), no. 50924/99, 12 December 2000; and *Chapman v. the United Kingdom*, no. 27238/95, § 82, ECHR 2001-I).

5. Proportionality of the interference

81. The Court must examine in particular whether an interference with the peaceful enjoyment of possessions strikes the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, or whether it imposes a disproportionate and excessive burden on the applicant (see, among many other authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005-VI).

82. The Court considers that in the area of land development and town planning the Contracting States should enjoy a wide margin of appreciation in order to implement their town and country planning policy (see *Terazzi S.r.l.* and *Elia S.r.l.*, cited above). Nevertheless, in the exercise of its power of review the Court must determine whether the requisite balance was maintained in a manner consonant with the applicant's right of property (see, *mutatis mutandis*, *Sporrong and Lönnroth,* cited above, § 69).

83. In that connection, the Court first observes that in 1993 the municipality of Milanówek adopted a local land development plan. Under this plan, the applicant's property was designated for future expropriation, with a view to the construction of a ring-road and a hospital in the vicinity of his plots. However, the Court observes that the plan did not provide any timeframe within which the ring-road and the hospital would be constructed. Further, in 2001, eight years after the plan had been adopted, the Mazowiecki Governor informed the applicant that the construction of the road would not be budgeted for before 2010.

84. As a result, the applicant was threatened with expropriation at an undetermined point in time and he did not have any effective entitlement to compensation throughout this period. This was repeatedly confirmed by the municipal authorities, replying to the applicant's requests (see paragraph 22 above). The Court emphasises that this situation lasted for a long period of time: from 1993 when the plan was adopted until 31 December 2003, when this plan eventually expired under the provisions of the Local Planning Act 2003.

85. The Court observes that the successive amendments to the 1994 Local Planning Act had a double effect: they extended the validity of the local plan and also prolonged the period during which the applicant could not claim any compensation from the municipality.

86. In this connection, the Court notes the Government's argument that the provisions of the 1994 Act were intended to improve the situation of owners, in that this Act introduced a right to compensation which previously had never existed. They also pointed out the temporary nature of the prolongations.

The Court observes that it is not in dispute that the 1994 Act was intended to improve the situation of owners to be expropriated in the future in that a right to compensation was foreseen for them for the first time in

Polish law. However, in its assessment of the proportionality of the measures complained of, the Court cannot overlook the fact that, when enacting the 1994 Act, the legislature on the one hand introduced compensatory provisions into law, but at the same time excluded the application of those provisions in respect of plans adopted before 1 January 1995. What is more, the legislature subsequently prolonged this situation on three occasions, for an overall period of nine years. Consequently, until July 2003, the date of entry into force of the Local Planning Act 2003, the applicant could not make any claim for compensation against the municipality in respect of his particular situation.

87. Lastly, the Court notes that since July 2003, when the 2003 Act entered into force, section 36 of that Act has granted a right to compensation to owners who were restricted in the use of their property as a result of the adoption of a local development plan (see paragraph 35 above). Such claims can be pursued before civil courts.

However, it observes that these provisions started to operate only after the 2003 Act had entered into force and only in respect of local land development plans adopted after that date. It has not been argued or shown that the 2003 Act provides for any retrospective right to compensation for the prejudice suffered by the applicant, before its entry into force, as a result of restrictions originating in land development plans adopted in the past. Consequently, the entry into force of the 2003 Act did not alter the applicant's situation.

88. The Court notes the Government's argument that by adopting these provisions the legislature had given the local government authorities time to adjust land development plans to the new needs of the municipalities, without the latter being obliged to compensate individual owners for the consequences of local development plans adopted before 1989, when the transformation of the legal and economic system of the State had been undertaken.

The Court is aware that the difficulties in enacting a comprehensive legal framework in the area of urban planning constitute part of the process of transition from a socialist legal order and its property regime to one compatible with the rule of law and the market economy – a process which, by the very nature of things, is fraught with difficulties. However, these difficulties and the enormity of the tasks facing legislators having to deal with all the complex issues involved in such a transition do not exempt the Contracting States from the obligations stemming from the Convention or its Protocols (see *Schirmer v. Poland*, no. 68880/01, 21 September 2004, § 38).

89. Lastly, the Court notes that the applicant's request for an initial approval of a development project on his land was refused in 2001. In the refusal the authorities essentially referred to the provisions of the land development plan. However, at the time when the applicant requested the

approval there were no good grounds on which to believe that the land development plan adopted in 1993 would be implemented promptly. As a result, the *de facto* blocking of any construction on the applicant's property did not serve any immediate or medium-term purpose in the interest of the community.

90. In the Court's view, given that it was uncertain whether the land development plan would be implemented in the reasonably near future, this state of affairs, seen as a whole, disclosed a lack of sufficient diligence in weighing the interests of the owners against the planning needs of the municipality.

91. Having regard to the above considerations, the Court is of the view that a fair balance was not struck between the competing general and individual interests and that the applicant had to bear an excessive individual burden.

92. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage which he had sustained as a result of distress and uncertainty occasioned by the violation complained of and for the fact that no efforts had been made by the competent authorities to clarify and ameliorate the legal and factual position of owners threatened with expropriation in the future.

95. The Government submitted that the applicant's claim was exorbitant and should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to award a sum which would be considerably lower than the amount claimed.

96. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violation found above (see §§ 81-92). It is of the view that the breach of Article 1 of Protocol No. 1 caused the applicant distress and frustration on account of the prolonged precariousness of his ownership of his property, which the mere finding of a violation

cannot adequately compensate (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, §§ 70-71, ECHR 2000-VIII; *Schirmer v. Poland*, cited above). Having regard to its case-law in similar cases (see, among many other authorities, *Eduardo Palumbo v. Italy*, no. 15919/99, 10 November 2000, § 59, *G.L. v. Italy*, no. 22671/93, 3.08.2000, § 49; *A.O. v. Italy*, no. 22534/93, 30.05.2000, § 33) and ruling on an equitable basis, the Court awards the applicant EUR 5,000.

B. Costs and expenses

97. The applicant did not seek reimbursement of costs and expenses relating to the Convention proceedings and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

98. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President