



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

FOURTH SECTION

CASE OF PIETRZAK v. POLAND

(Application no. 38185/02)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

07/07/2008

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 Pietrzak v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 38185/02) 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 Polish nationals, Mr Wiesław Pietrzak and Mrs Halina Pietrzak (“the applicants”), on 30 September 2002.

2. The applicants, who had been granted legal aid, were represented by Mr J. Weinberger, a lawyer practising in Gdańsk. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicants alleged that their right to the peaceful enjoyment of their property had been breached since the land which they owned had been designated for expropriation at some undetermined future date. Under domestic legislation they were not entitled during the relevant period to any compensation for the interference with their ownership rights resulting from the future expropriation.

4. On 4 May 2006 the Court decided to give notice of the application to the Government. 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 first applicant, Mr Wiesław Pietrzak (“the first applicant”), was born in 1943. The second applicant, Mrs Halina Pietrzak (“the second applicant”), was born in 1951. They are married and live in Gdańsk.

6. The first applicant owns a plot of land and a house situated on it located in the suburbs of Gdańsk. The major part of his property is classified as agricultural land. There are some other houses in the area, but a significant part of it is used for allotments.

A. Facts prior to 10 October 1994

7. It appears that the first applicant’s father acquired the property in question in 1972. At that time, the property was classified as agricultural land and lay outside the perimeters of Gdańsk. Subsequently, with the enlargement of the city, the property became located in the vicinity of a residential and allotments area.

8. In 1973 and 1977 the first applicant’s father was twice refused planning permission on the ground that the plot had not been designated for construction of a house.

9. In April 1975 a local development plan for the area was adopted. The first applicant’s plot was designated for the construction of a road.

10. On an unspecified later date the first applicant acquired the property at issue.

11. On 28 May 1988 the Gdańsk Municipal Council adopted a local development plan which stipulated that a road was to be constructed on the first applicant’s plot.

12. On 24 December 1987 and 15 November 1991 the Gdańsk Municipality informed the first applicant that his property was designated in the relevant local development plan for the building of a new road. Accordingly, the property could not be used for the purposes of constructing a new house or planting an orchard.

13. On 12 February 1992 the first applicant requested the Mayor of Gdańsk to acquire his property as it had been designated for the building of a road. On 22 June 1992 the Mayor transmitted that request to the Head of the Gdańsk District Office (*Kierownik Urzędu Rejonowego*) which was competent to decide on it. It appears that the request was never examined.

14. On an unspecified date in 1992 the first applicant petitioned the Ombudsman. On 14 July 1992 the Ombudsman informed him that, following a number of similar complaints concerning the legal status of so-called “frozen properties” (i.e. properties which were designated in a local

development plan for public use at an undetermined future date), he had requested the Minister of Local Planning and Construction to adopt a general solution to the problem. In particular, the Ombudsman called for a provision in the local planning bill which would impose an obligation on the local authorities to acquire “frozen properties” or offer an alternative plot to the owners concerned.

15. On 29 June 1993 the Gdańsk Municipal Council adopted a general local development plan. The plan maintained the provision that a road was to be constructed on the applicant’s plot. Prior to the adoption of the new plan, the Minister of Agriculture and the Gdańsk Governor had authorised the change of use of agricultural land for non-agricultural purposes.

16. On 20 August 1993 the applicant inquired with the Gdańsk Municipality about the conditions for construction of a temporary building (*zabudowa tymczasowa*) on his property. On 6 October 1993 he was informed about the relevant conditions for properties designated in local development plans for future public use. He was also informed that he could continue using the property for agricultural purposes or, alternatively, he could construct a temporary storehouse. The municipality further explained that the planned road would not be constructed in the foreseeable future. The applicant was invited to submit concrete proposals for consideration by the municipality and informed that any temporary buildings would have to be removed at his own expense when the planned road was constructed. It appears that the first applicant did not submit any proposals to the municipality.

B. Facts after 10 October 1994

17. On 1 January 1995 the Law of 7 July 1994 on Local Planning (“the 1994 Act”) entered into force.

18. On 11 February 2000 the first applicant’s lawyer sent a letter to the Mayor of Gdańsk, inquiring about his unanswered request of 1992 for the acquisition of the property.

19. On 30 March 2000 the first applicant was informed that due to the dissolution of the district offices it was not possible to establish the reasons as to why the Gdańsk District Office had not taken any decision on his request. He was further informed that the local development plan of 28 May 1988, which had specified that a new road would pass through the first applicant’s property, was still in force. Furthermore, the municipality’s investment plan for the years 2000-2003 did not foresee the construction of the road in question. Accordingly, the first applicant could use his land as previously. In addition, the first applicant was informed that according to the 1994 Act the municipality could not acquire his property since the relevant local development plan had been adopted prior to 1995 and that his

use of the property had not become unfeasible. Consequently, his request could not be granted.

20. The applicants appealed against that decision to the Gdańsk Local Government Board of Appeal. On 14 September 2000 the Board of Appeal ruled that the appeal was inadmissible in law. It observed that in accordance with the Code of Administrative Procedure an appeal could be lodged only against an administrative decision. However, the Board of Appeal noted that the provisions of the 1994 Act (section 36) excluded the possibility of adopting an administrative decision in respect of the applicants' request for the acquisition of their property by the municipality. Thus, the letter of the Mayor of Gdańsk of 30 March 2000 could not be considered as an administrative decision.

21. The applicants appealed against that decision to the Supreme Administrative Court, relying, *inter alia*, on Article 1 of Protocol No. 1 to the Convention.

22. On 8 May 2002 the Supreme Administrative Court dismissed their appeal.

23. On 25 February 2003 the Gdańsk Municipality informed the first applicant that according to the local development plan which would remain valid until 31 December 2003 his property had been designated for a future thoroughfare.

24. On 5 August 2003 the Gdańsk Municipality informed the first applicant that the old local development plan designating his property for the construction of a road would remain valid until the end of 2003. In addition, he was informed that the municipal investment plan for the years 2004-2008 did not foresee the construction of the road in question. He was also informed that a new local development plan was being drafted and that he was entitled to lodge his objections in that respect.

25. On 11 July 2003 the Law of 27 March 2003 on Local Planning ("the 2003 Act") entered into force on 11 July 2003. It repealed the 1994 Act.

26. On 31 December 2003 the old local development plan expired.

27. On 31 May 2005 the first applicant requested the municipality to provide him with information as to the future development of his land.

28. On 8 June 2005 he was informed that pursuant to the 2003 Act until the adoption of the new local development plan the manner of development of a particular property was to be determined by means of planning permission. However, such permission could only be granted if a number of conditions specified in section 61 of the 2003 Act were met, including that the property at issue did not have to be reclassified from agricultural to non-agricultural land. In connection with the last requirement, the first applicant submitted that he was prevented from developing his property until such time as the new local development plan had been adopted.

29. It appears that as of December 2005 the Municipality of Gdańsk had not yet adopted a new local development plan in respect of the first

applicant's land. According to the preliminary draft plan, the applicants' property will be designated in the major part for housing purposes and in the remaining part for housing and services purposes. The property will adjoin the planned road, but the road will not pass through the applicants' property.

30. As of 11 September 2006 the applicant had not yet applied for planning permission.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Changes in land development legislation during the period concerned

31. From 1 January 1985 to 31 December 1994 questions of land development were governed by the Law of 12 July 1984 on Local Planning. Under this law 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.

32. On 7 July 1994 a new Law on Local Planning Act was enacted ("the 1994 Act"). It entered into force on 1 January 1995.

33. Section 36 of the 1994 Act 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.

34. However, pursuant to section 68 § 1 of the 1994 Act, these obligations and the corresponding claims of the owners applied only to plans adopted after the 1994 Act had entered into force, i.e. to plans adopted by local authorities after 1 January 1995.

35. Pursuant to the 1994 Act, plans adopted before its entry into force were to expire on 31 December 1999. 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 1994 Act which extended until the end of 2002 the validity of the land development plans adopted before 1 January 1995.

36. On 27 March 2003 a new Law on Local Planning was enacted ("the 2003 Act"). It entered into force on 11 July 2003 and repealed the 1994 Act. Under section 87 of the 2003 Act, all local plans adopted before 1 January 1995 remained valid, but not beyond 31 December 2003.

37. Compensation entitlements for owners, provided for by the 1994 Act, were in essence maintained by the 2003 Act. Pursuant to section 36 of the latter 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 had become impossible or had been restricted, it was open to the owner to claim compensation from the municipality, or to request the municipality to buy the plot. Any litigation which might arise in this respect between local authorities and owners could 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.

38. Section 59 of the 2003 Act provides, subject to certain conditions, for a possibility of developing a plot of land by way of planning permission in the absence of a local development plan.

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

B. Judgment of the Constitutional Court (case no. K 6/95)

40. In its judgment of 5 December 1995, the Constitutional Court examined the Ombudsman's request to determine the compatibility with the Constitution of section 68 § 1 of the 1994 Act insofar as it excluded the application of section 36 of that Act to land development plans adopted before 31 December 1994. The Constitutional Court referred to its established case-law to the effect that the right to property could not be regarded as *ius infinitivum*. Consequently, its exercise was 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 property rights. 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 property rights that it could be regarded as being incompatible with their constitutional protection.

THE LAW

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

41. The applicants alleged that their right to the peaceful enjoyment of their possessions had been breached. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“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.”

42. The Government contested that argument.

A. Admissibility

1. Incompatibility ratione temporis with the provisions of the Convention

43. The Government argued that they could not be held responsible for any consequences stemming from the local development plan adopted before 10 October 1994, the date on which Poland ratified Protocol No. 1 to the Convention. The plot at issue had been classified as agricultural land even before it had been acquired by the first applicant’s father in the 1970s. The use of the first applicant’s plot had been determined by the provisions of law and the local development plan long before 10 October 1994. On that date the first applicant had not possessed, in particular, the right to build other houses on his plot. After 10 October 1994 no provision of law and no act of the domestic authority had limited any property rights of the applicants. Consequently, the Government submitted that the application should be declared incompatible *ratione temporis* with the Convention. Alternatively, they maintained that in respect of the Court’s temporal jurisdiction only the period after 11 February 2000 should be taken into consideration by the Court as only on that date had the applicant submitted his grievances to the authorities

44. The applicants disagreed.

45. The Court observes that the applicants’ complaint is not directed against a single measure or decision taken before, or even after,

10 October 1994. It rather refers to continuous restrictions imposed on the exercise of their ownership and arising from various legal measures, adopted both before and after that date. In this respect, the Court considers that it cannot be said that the restrictions at issue which had had their origin in the period prior to 10 October 1994 remained unchanged after that date. It further observes that the 1994 Act, which entered into force on 1 January 1995, maintained the impugned restrictions and extended their effects until 31 December 2003. Furthermore, the Court notes that the arguments raised by the Government are the same as those already examined and rejected by the Court in previous cases against Poland (see *Rosiński v. Poland*, no. 17373/02, §§ 42-43, 17 July 2007) and the Government have not submitted any new arguments which would lead the Court to depart from its previous findings. For these reasons, the Government's plea of inadmissibility on the ground of lack of jurisdiction *ratione temporis* must be dismissed.

2. Incompatibility ratione personae with the provisions of the Convention

46. The Government argued that only the first applicant (Wiesław Pietrzak) was the owner of the property at issue, as transpired from the pleadings of the applicants' lawyer of 13 April 2006. Therefore, the application should be found incompatible *ratione personae* in respect of the second applicant (Halina Pietrzak).

47. The applicants did not comment.

48. The Court notes that the applicants' lawyer submitted in his letter of 13 April 2006 that the first applicant (Wiesław Pietrzak) was the sole owner of the property at issue. That fact is confirmed by a copy of the entry from the local land register. It follows that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 in respect of the second applicant (Halina Pietrzak).

3. Incompatibility ratione materiae with the provisions of the Convention

49. The Government submitted that the applicant had never acquired a right to construct on his plot which from the beginning had been classified as agricultural land. The applicant had had no enforceable claim or legitimate expectation that the authorities would allow him to use the plot for the construction of a house. The Government averred that Article 1 of Protocol No. 1 did not guarantee the right of an individual to use his/her property for specific purposes according to his/her wish and to grant him/her the right to construct on a property which had been classified as

agricultural land. Thus, the present application was incompatible *ratione materiae* with the Convention.

50. The applicant, referring to the *Skibiński v. Poland* judgment, argued that although being formally the owner of the property, he had been significantly restricted in the effective exercise of his property rights.

51. The Court notes the Government's argument that under the 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 until 31 December 2003 (see, *Rosiński*, cited above, § 46). In addition, the Court notes that prior to the adoption of the general local development plan in 1993 the authorities authorised the change of use of agricultural land for non-agricultural purposes (see paragraph 15 above). The Court therefore rejects the Government's objection.

4. Exhaustion of domestic remedies

52. The Government submitted that the applicant had not exhausted all relevant domestic remedies.

(a) Application for planning permission

53. The Government underlined that the applicant had not made any formal request for planning permission after 10 October 1994, in particular after the entry into force of the 1993 local development plan. Under the 1994 Act planning permission would be refused only if the proposed development would be incompatible with the local development plan. The applicant might have applied for planning permission allowing him to use his property in a more profitable manner, such as the construction of temporary buildings connected with agricultural activities. Furthermore, the applicant had not followed the municipality's suggestions of October 1993 as to the construction of a storehouse. The applicant could also plant an orchard or run a garage on his property without the need to apply for special permits.

54. In respect of the period after 31 December 2003, i.e. following the expiration of the validity of the 1993 local development plan, the Government underlined that under section 59 § 1 of the 2003 Act the applicant clearly could have obtained planning permission in the absence of a local development plan. However, he had not availed himself of that possibility. In addition, the relevant authorisation for the use of agricultural land for non-agricultural purposes had already been granted to the municipality before the adoption of the 1993 plan. Furthermore, under the draft of a new local development plan the applicant's property was designated for housing and not for a road.

55. The applicant argued that until 31 December 2003 each of his attempts to obtain planning permission had been futile since the local development plans in force at the material time had designated his property for the construction of a road. He had attempted to obtain permission and had written to the local authorities to that end, but to no avail. In respect of the period after 31 December 2003 the applicant submitted that he still would not have obtained planning permission as his property would have to be reclassified from agricultural to non-agricultural land.

56. The Court notes that the relevant local development plans in force until 31 December 2003 specified that the applicant's property was to be used for the construction of a future road. Thus, it accepts that until that date any application for planning permission would have been ineffective. The Court further observes that the possibility of using the applicant's property in a temporary manner referred to by the Government cannot compensate for the significant restrictions on the use of his property which resulted from the stipulations in the local development plan. In this respect, the Court notes that any temporary buildings constructed by the applicant would have had to be dismantled at his expense. Consequently, the Court finds that an application for planning permission cannot be regarded as an effective remedy in respect of the period up until 31 December 2003.

57. In respect of the period after 31 December 2003 the Court will address the change in the legal situation concerning the applicant's property at the merits stage of the judgment.

(b) Constitutional complaint

58. The Government argued that a constitutional complaint was an effective, sufficient and available domestic remedy in the applicant's case. The applicant could have challenged the compatibility of the transitional provisions of the 1994 with the 1997 Constitution. There had been no obstacles to the filing of such a complaint despite the fact that the constitutionality of those provisions had already been examined in 1995. The Constitutional Court could examine again the compatibility of the relevant provisions of the 1994 Act with the new Constitution which entered into force on 17 October 1997.

59. The Government further argued that the applicant should have lodged a civil action with a court, claiming damages against 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 to challenge the provisions of the 1994 Act which were applied to his case.

60. According to the Government, the applicant could have also applied for planning permission. Had he obtained a negative decision due to the provisions of the local development plan, he would have been entitled to file a constitutional complaint against section 67 § 1 of the 1994 Act which

maintained and, subsequently, extended the validity of the plans adopted prior to 1 January 1995.

61. The applicant disagreed. He argued that the Government had failed to specify which provision of the 1994 Act had been unconstitutional, in particular having regard to the Constitutional Court's judgment of 5 December 1995. In this respect he submitted that, regardless of whether the constitutional review had taken place before or after the entry into force of the 1997 Constitution, the Constitutional Court would have interpreted the constitutional right to property in the same way.

62. 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 in lieu of the plot designated for expropriation. He did not have a claim against the municipality to oblige it to acquire his property before the planned expropriation. Lastly, he was also prevented from pursuing any significant development projects on his property (see paragraphs 16, 19 and 23 above). These considerations are relevant for the period up until 31 December 2003 (see paragraph 36 above).

63. In respect of the effectiveness of the constitutional complaint, the Court notes that the arguments raised by the Government are similar to those already examined and rejected by the Court in previous cases against Poland (see *Rosiński*, cited above, §§ 42-43). The Government further argued that the applicant should have applied for planning permission and having exhausted all relevant administrative law remedies should have filed a constitutional complaint against section 67 § 1 of the 1994 Act. However, the Court notes that such a course of action was bound to fail since until 31 December 2003 the local development plan in force stipulated that the applicant's plot was designated for the construction of a road. Having regard to the stipulations in the local development plan, the local authorities could not issue a decision in favour of the applicant (in particular concerning extensions or construction of a new house) since section 43 of the 1994 Act provided that planning permission had to comply with the local development plan. It would also appear that section 67 § 1 of the 1994 Act would not serve as a direct legal basis for the refusal to grant planning permission. Furthermore, the Court notes that the Constitutional Court did not have jurisdiction to examine the constitutionality of a local development plan (see the Constitutional Court's decision of 6 October 2004 adopted in its "full composition", case no. SK 42/02).

64. The Government further argued that the applicant should have filed a constitutional complaint in the event of an unsuccessful outcome to his action for damages against the municipality. However, the Court observes that the relevant provisions of the 1994 Act clearly excluded liability of

local authorities for damage resulting from restrictions on the use of property in connection with the future use of the property as specified in the local development plan adopted prior to 1 January 1995. In this respect the Court notes that the Government argued that the applicant could challenge by way of a constitutional complaint the exclusion of compensatory measures as provided under section 36 of the 1994 Act for owners in his position. However, the Court observes that the Constitutional Court in its case-law has consistently ruled out the possibility that a constitutional complaint could be used to challenge the lack of legislation in a given sphere affecting constitutional rights and freedoms (see, *inter alia*, decision of 24 January 1999, case no. Ts 124/98 and decision of 13 October 2004, case no. Ts 55/04).

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

(c) Procedure for amending the local development plan

66. The Government maintained that the applicant had not made use of any of the available measures in the procedure for amending the local development plan. They had never requested the authorities to amend the local development plan pursuant to the relevant provisions of the 1994 Act.

67. The applicant disagreed and submitted that the above procedure could not be considered an effective remedy in his case.

68. The Court does not find it established that the procedure for amending the local development plan can be regarded as an effective remedy in the circumstances of the case.

(d) Complaint under section 101 of the Law on Local Government and related compensatory claims

69. The Government argued that the applicant had not availed himself of the possibility of lodging a complaint with the administrative court under section 101 of the Law of 8 March 1990 on Local Government against the municipality's resolution adopting the local development plan. It had been underlined in the Constitutional Court's judgment of 5 December 1995 that that remedy could be used by owners adversely affected by the old local development plans. The Government further referred to the Supreme Court's judgment of 3 June 1993 (case no. III ARN 28/93) which had held that the administrative court had had to review whether a proper balance had been struck in such cases between the interest of the community and the interest of the owners. Had the applicant been successful in pursuing his complaint under section 101 he could have then claimed compensation under the relevant provisions of the Code of Administrative Procedure and the Civil Code.

70. The applicant contested the Government's view.

71. The Court observes that the Government have not provided any examples of domestic cases where an individual had been able to successfully challenge the designation of his/her property for public use in a local development plan by filing a complaint under section 101 of the Law on Local Government. The Court considers that it has not been shown that the above complaint could be considered an effective remedy in respect of a complaint such as the applicant's. The same applies to the related compensatory measures invoked by the Government.

(e) Claims under section 36 of the 1994 Act

72. The Government averred that after the municipality's refusal to acquire his plot the applicant should have lodged a civil action with a court demanding that the municipality satisfy the claims under section 36 §§ 1 and 2 of the 1994 Act. They relied on the decision of the European Commission of Human Rights of 2 July 1997 in the case of *Swat v. Poland* where in similar factual and legal circumstances the Commission had rejected the application for non-exhaustion.

73. The applicant argued that he had had no claims for damages against the local authorities, referring to the *Skibińscy v. Poland* judgment.

74. The Court observes that under the provisions of the 1994 Act the liability of public authorities for any damage which might have its origin in expropriation planned for the future was expressly excluded (see *Rosiński*, cited above, § 56). Hence, this remedy did not offer any prospects of success.

(f) Complaint about inactivity of an administrative authority

75. The Government maintained that the applicant had remained passive from 11 February 1992 to 11 February 2000 in the proceedings concerning his application for acquisition of his plot by the authorities. During that period he had not complained under Article 37 of the Code of Administrative Procedure about the authorities' failure to decide on his application within the prescribed time-limit.

76. The applicant contested the Government's view.

77. The Court recalls that the core of the applicant's complaint relates to a set of legal 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 prior to and after the entry into force of the 1994 Act (see paragraphs 80-82 below). In those circumstances, the Court finds that a complaint about the inactivity of the administrative authorities in respect of his application for acquisition could not redress the limitations on the exercise of the property rights underlying the instant case. Consequently, that remedy could not be considered effective in the applicant's case.

(g) Conclusion as to exhaustion of domestic remedies

78. Having regard to the foregoing, the Court rejects the Government's objections concerning non-exhaustion of domestic remedies. In respect of the period after 31 December 2003 the Court will address the change in the legal situation concerning the applicant's property at the merits stage of the judgment.

79. Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

80. The applicant argued that there had been a breach of his right to the peaceful enjoyment of his possessions. He had remained the owner of the land, but in view of the planning measures taken in his case and the applicable legal framework his property rights had been stripped of any real significance. On the one hand, the applicant could not obtain a building permit in order to make use of his property, in particular by constructing a new house or substantially renovating his old house. On the other, he had been adversely affected by the expropriation to be carried out at an undetermined future date.

81. He averred that the legal uncertainty surrounding the status of his land, the lack of any effective domestic remedy capable of rectifying the situation and the absence of any compensation had amounted to a situation in which he had had to bear an excessive burden. The interference with his property rights had not been necessary and had not furthered the general interest.

82. Furthermore, even though his property had been originally classified as agricultural land, it had not been feasible to use it for that purpose since with the enlargement of the city the plot was now situated in the housing area.

2. The Government's submissions

83. In the Government's view, there had been no interference with the applicant's right to the peaceful enjoyment of his possessions. The plot bought by the applicant's father and subsequently acquired by the applicant had originally been designated for agricultural purposes and could have been used accordingly. Even if no public investment had been planned, the applicant would not automatically have had the right to use his plot for housing construction, or to demand that it be designated for such purposes

(see *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).

84. The Government maintained that neither the provisions of Polish law nor of Protocol No. 1 imposed on the 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 acquired 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 (*zasady współżycia społecznego*) and the socio-economic purpose of ownership (*społeczno-gospodarcze przeznaczenie prawa*).

85. As regards the necessity of the alleged interference, the Government maintained that the measures applied in the applicant's case had pursued the important general interest of facilitating town planning. The road that had been planned on the applicant's property had been intended to resolve the communications problems of the municipality of Gdańsk. Furthermore, the Government argued that, even in the absence of transitional regulations relating to the old local development plans, section 36 of the 1994 had not been applicable with respect to the applicant as the necessary prerequisites specified in it had not been met in the present case. There had been important general interest considerations, namely the need to protect the budgetary viability of the newly-created local governments and of the State, which had fully justified the application of the transitional regime to the old local development plans (adopted prior to 1 January 1995).

86. The process of general transformation of the system of local planning had been successfully completed with the annulment of all local development plans adopted prior to 1 January 1995 which took effect on 31 December 2003. The applicant's situation had significantly improved as a result of the entry into force of the 2003 Act since, subsequently, it was open to him to apply for planning permission in respect of the property that had been initially designated for agricultural purposes. However, he had not availed himself of that possibility.

87. 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 of *Immobiliare Saffi v. Italy* ([GC], no. 22774/93,

ECHR 1999-V) in that the applicant could freely enjoy his ownership. The Government underlined that the applicant had already possessed a house on his plot. In addition, he had had other temporary possibilities for using his property in a more profitable manner; however he had not pursued them.

88. In conclusion, the Government averred that the measures applied in the present case could not be considered disproportionate to the requirements of the municipality's legitimate aim of planning the area, having regard to the margin of appreciation under Article 1 of Protocol No. 1.

3. *The Court's assessment*

(a) **General principles**

89. 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.”

(b) **Whether there was interference with the peaceful enjoyment of “possessions”**

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

91. The Court observes that the applicant's situation was affected by the local land development plan adopted by the municipality of Gdańsk in 1988 because it provided for the future expropriation of his land. The Court emphasises that the applicant's situation was adversely 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 (*Skibińscy*, cited above, § 77).

92. In that connection, the Court further notes that before the enactment of the 1994 Act 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 on 1 January 1995. Consequently, they were not applicable to the applicant's situation as the plan for the municipality had been adopted in 1988.

93. The Court further notes that the applicant was informed by the municipality that under the applicable legislation the municipality was not obliged to acquire his property which was to be expropriated in the future pursuant to the 1988 land development plan which was in force at that time (see paragraph 19 above). Furthermore, the applicant 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.

94. The Government argued that the applicant could continue using his property for agricultural purposes. However, the Court notes that that possibility was rather illusory since the applicant was facing expropriation at an undetermined date in the future. Moreover, the viability of such use was open to doubt given that with the enlargement of the city the property was located near built-up areas.

95. 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*, cited above, §§ 58-60; *Skibiński*, cited above, § 79).

96. In this respect the Court notes that those limitations on the applicant's property rights came to an end on 31 December 2003. On the latter date the validity of the local development plan at issue expired pursuant to the 2003 Act. Consequently, after 31 December 2003 the applicant could pursue the development of his property, in particular by applying for planning permission under section 59 of the 2003 Act.

97. 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 (*James and Others*, cited above, § 37 and *Skibiński*, cited above, § 80).

(c) Whether the interference was “provided for by law”

98. 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).

99. 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.

100. The Court notes that the first two measures were taken on the basis of the 1994 Act. 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 33-35 above). The interference complained of was therefore “provided by law” within the meaning of Article 1 of Protocol No. 1 to the Convention.

(d) Whether the interference was “in the general interest”

101. 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 *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 91, ECHR 2005-...; *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).

102. 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).

(e) Proportionality of the interference

103. 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* [GC], cited above, § 93).

104. 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 policies (see *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. ..., § 75); *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).

105. In that connection, the Court first observes that in 1988 the municipality of Gdańsk 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 road. However, the Court observes that the plan did not provide any timeframe within which the road would be constructed. Further, in 2000, twelve years after the 1988 plan had been adopted, the Mayor of Gdańsk informed the applicant that the construction of the road would not be budgeted for before 2004.

106. 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 in the period up until 31 December 2003. This was repeatedly confirmed by the municipal authorities, replying to the applicant's requests for acquisition of his land (see paragraph 19 above). The Court emphasises that this situation lasted for a long period of time: from 1988 when the plan was adopted until 31 December 2003, when this plan eventually expired under the provisions of the 2003 Act.

107. The Court observes that the successive amendments to the 1994 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.

108. 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 measures, 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 31 December 2003 the applicant could not make any claim for compensation against the municipality in respect of his particular situation obtaining up to that date.

109. 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 new local development plan (see paragraph 37 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.

110. 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 and *Skibiński*, cited above, § 96).

111. Lastly, the Court notes that the applicant's request for acquisition of his property by the municipality was refused in 2000. In the refusal the authorities essentially referred to the provisions of the land development plan adopted in 1988. However, at the time when the applicant made his request there were no good grounds on which to believe that the 1988 plan would be implemented promptly. As a result, the *de facto* blocking of any construction on the applicant's property until 31 December 2003 did not serve any immediate or medium-term purpose in the interest of the community.

112. In respect of the period after 31 December 2003 the Court notes that the 1988 local development plan which designated the applicant's plot

for the construction of a road expired on the former date. It further observes that the 2003 Act provides for a possibility, subject to certain conditions, of applying for planning permission in the absence of a local development plan. It would appear that this possibility is open to the applicant.

113. 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.

114. 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 in respect of the period up until 31 December 2003 (*Skibińscy*, cited above, § 97 and *Rosiński*, cited above, § 88).

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

II. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

116. The applicant also alleged that he had been a victim of discrimination contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. He referred to repeated prolongations of the validity of the old local development plan which had prevented him from making use of the measures provided under section 36 of the 1994 Act.

117. The Court notes that this complaint is linked to the complaint examined above and must, therefore, likewise be declared admissible.

118. Having regard to its findings relating to Article 1 of Protocol No. 1 to the Convention (see paragraph 115 above), the Court does not find it necessary to examine whether, in this case, there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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

120. The applicant claimed 140,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

121. The Government observed that the applicant had not specified his claim and had not adduced any evidence to the effect that he had sustained any damage.

122. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and therefore rejects this claim. On the other hand, it considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violation found above. 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. Having regard to its case-law in similar cases (see, *Rosiński*, cited above, § 93) and ruling on an equitable basis, the Court awards the applicant EUR 5,000 under the head of non-pecuniary damage.

B. Costs and expenses

123. The applicant made no claim for costs and expenses.

C. Default interest

124. 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 in respect of the period up until 31 December 2003;
3. *Holds* that there is no need to examine the complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant (Mr Wiesław Pietrzak), 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, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President