CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33576/96
by Zygmunt SZYSZKIEWICZ
against Poland

The European Court of Human Rights (Fourth Section) sitting on 9 December 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mr J. Hedigan,
Mrs S. Botoucharova, *judges*,

and Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 January 1995 by Zygmunt Szyszkiewicz against Poland and registered on 29 October 1996 under file no. 33576/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Polish citizen, born in 1931 and living in Augustów, Poland.

A. Particular circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The applicant's criminal conviction in 1983

In 1983, during the martial law which was in force in Poland at that time, the applicant was convicted of disseminating anticommunist leaflets.

2. The proceedings concerning the applicant's claim for restitution of property

Apparently in 1949, within the framework of agrarian reform, the applicant's father was awarded a plot of land in S. Later his ownership was listed in the land register run by the Ełk District Court.

In 1969 the municipal administration gave a decision by which the plots in S. were taken over by the State, pursuant to the 1949 Decree allowing for expropriation of agricultural lands which were not used by their owners, considering that the land in question had not been farmed by the applicant's father.

In 1973 an administrative decision was issued by virtue of the Agricultural Property Regulation Act of 1971 to the effect that a certain J.K. had become the owner of this plot.

The applicant's father was also awarded other plots in K. In 1969 this land was likewise expropriated by an administrative decision.

In reply to the applicant's enquiry about the possibility of restitution of these plots, in a letter of 14 December 1992 the Suwałki Regional Office informed him that the plot in S. had been awarded to J.K. pursuant to the Agricultural Property Regulation Act of 1971 and that he had obtained an administrative decision to the effect that he had become the owner of this plot. The plot located in K. had been taken over by the State under the Decree allowing for expropriation of agricultural lands, which were not used by their owners. Therefore the applicant's request for restitution could not be granted.

On an unspecified later date the applicant lodged a civil action against the State Treasury with the Suwałki Regional Court, claiming that the nationalisation decisions be declared null and void for being unlawful. He further claimed restitution of the plots in S. and K. and compensation for damage he had sustained as a result of the allegedly unlawful expropriation decisions. He claimed in particular compensation for lost profits resulting from the fact that the farms could not have been used as a result of their nationalisation.

On 3 December l993 the Suwałki Regional Court refused to entertain the applicant's action, considering that civil courts lacked jurisdiction to examine the applicant's claims for restitution of property.

The applicant appealed against this decision, claiming that the expropriation decisions were not in conformity with the laws in force at the time when they had been given.

On 24 February 1994 the Białystok Court of Appeal upheld the contested decision. The court noted that the applicant sought a judicial review of administrative decisions before the civil court and, eventually, a declaration that they should be declared null and void for being unlawful. However, under legal provisions concerning jurisdiction of ordinary courts and of the Supreme Administrative Court, civil courts lacked jurisdiction to examine appeals against administrative decisions. The court observed that had ordinary courts been allowed to examine appeals against administrative decisions, this could have led to situations in which contradictions would arise between final decisions rendered by the courts and by the administrative court in respect of the same administrative decision. The court further observed that both decisions about which the applicant complained could not be reviewed in any judicial proceedings. The court referred in this respect to the decision of the Supreme Court of 30 June 1992 (decision III CZP 73/92). Consequently, the decision under appeal was in conformity with the law.

On an unspecified later date the applicant lodged with the Supreme Administrative Court an appeal against the administrative decisions of 1969 and 1973.

On 31 August 1995 the Court rejected the applicant's appeals, considering that under Article 14 of the 1980 Supreme Administrative Court Act an administrative decision could not be appealed against to that court if administrative proceedings in which the decision had been rendered, had been instituted before 1 September 1980.

On 27 February 1996 the Minister of Justice refused to lodge an extraordinary appeal against this decision, finding that it was in conformity with the law.

3. The applicant's efforts to be awarded veteran status

By a letter of 2 July 1994 the Veterans' Office informed the applicant that his request to have veteran status awarded to him could not be satisfied. It was further stated that he had been convicted in 1982, whereas the Veterans' Act provided for granting veteran status only to persons who had been persecuted by the communist authorities in the years 1944 to 1956. Therefore he did not meet the relevant legal requirements.

The applicant lodged an appeal with the Supreme Administrative Court which was rejected on 7 November 1994, the Court considering that no appeal to the court against an information of an administrative body lay, and that no administrative decision had been given in the applicant's case.

4. The proceedings concerning the applicant's social insurance entitlements

On 6 March 1996 the Białystok Regional Court quashed a decision of the Social Insurance Board concerning the applicant's retirement benefits and ordered that the case be reconsidered and that the Board issues a new decision.

On 1 May 1996 the Board gave a new decision. The applicant appealed.

On 25 September 1997 the Białystok Regional Court dismissed the applicant's appeal against a decision of the Social Insurance Board.

On 19 November 1997 the Białystok Court of Appeal dismissed the applicant's appeal against this judgment.

On 24 June 1998 the Constitutional Court, in reply to the applicant's constitutional complaint, informed him that his complaint did not comply with the relevant legal requirements since it had not been drafted and signed by a lawyer. He was further informed that the constitutional complaint could not be lodged as an ordinary appeal against individual judicial or administrative decisions, but that its purpose was to call in question the compatibility with the Constitution of legal provisions, which served as a legal basis for an individual decision.

On 14 July 1998 the Augustów District Court granted the applicant legal aid to be paid by the legal aid scheme, and a lawyer was assigned to represent him in the proceedings before the Constitutional Court. By a letter of 18 August 1998 the lawyer informed the applicant that his complaints did not satisfy the requirements of the constitutional complaint as set out by law.

The applicant complained to the Białystok Bar. By a letter of 8 September 1998 the Białystok Bar informed him that the lawyer's conduct was not open to criticism, given that the constitutional complaint could not be lodged against individual decisions. The Constitutional Court could only examine whether laws which had served as a basis for an individual decision were compatible with the Constitution.

On 3 December 1998 the Białystok Regional Court dismissed the applicant's appeal against a decision of the Social Insurance Board concerning the calculation of periods giving rise to the applicant's retirement pension.

B. Relevant domestic law and practice

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

Article 196 § 1 of the Code of Administrative Procedure provides that an appeal can be lodged against a second-instance administrative decision with the Supreme Administrative Court on the ground that the decision is not in conformity with the law. Article 207 § 2 states that the Court shall set the decision aside wholly or in part if it establishes that the decision was issued in breach of substantive law; that the proceedings leading to the decision were flawed with a deficiency which led to the decision being null and void; or if such procedural shortcomings had occurred in the proceedings leading to the decision which would justify reopening of the proceedings.

Article 155 of the Code of Administrative Procedure permits the amendment or annulment of any final administrative decision at any time where necessary in the general or individual interest if this is not prohibited by specific legal provisions. In particular, a final administrative decision can be annulled if it has been issued by an authority, which had no jurisdiction or without a legal basis or contrary to the applicable law.

In 1980, by virtue of the Supreme Administrative Court Act, the judicial review of second-instance administrative decisions was introduced. Article 14 of the 1980 Act relating to temporal scope of its jurisdiction provided that an administrative decision could not be appealed against to the Court if administrative proceedings in which the decision had been given, had been instituted before 1 September 1980.

2. Provisions concerning the regulation of ownership of agricultural property

Article 63 of the State Treasury Land Property Act of 19 October 1991 provides that the general provisions of the Code of Administrative Procedure concerning amendment or annulment of final administrative decisions do not apply to decisions confirming the ownership of agricultural real property issued in accordance with the Agricultural Property Regulation Act of 1971.

A decision of the Supreme Court of 30 June 1992 states that Article 63 of the State Treasury Land Property Act does not confer a right to claim before a civil court that such decisions be declared null and void (decision III CZP 73/92).

3. Veteran status

The Law of 24 January 1991 on Veterans and Other Victims of War and Post-War Repression repealed the Law of 26 May 1982 on the Special Status of Veterans and enacted new criteria on which veteran status can be granted.

Under the 1982 Act, which was subsequently replaced by the 1991 Act, veteran status gives rise to various special employment and social insurance entitlements. The periods of veteran service are taken into account in calculating the periods giving rise to seniority. The same periods are multiplied by two in calculating periods giving rise to a retirement pension. Veterans who remain in employment are entitled to ten days' additional paid leave per year. They are entitled to retire earlier than other employees: women at the age of 55, and men at the age of 60, if they have satisfied another requirement for the acquisition of a retirement pension, i.e. if they have worked for periods set out in the Retirement Pensions Act. The retired veterans are further entitled to the special veterans' benefit, paid together with their retirement pension as a certain fixed sum.

4. Constitutional complaint

Under Article 78 of the Constitution of Republic of Poland of 2 April 1997, every person whose constitutionally guaranteed rights or freedoms were breached, is entitled, pursuant to procedure set out by a statute, to lodge a constitutional complaint with the Constitutional Court, claiming that a statute law enacted by Parliament (*Sejm*) or other legal provision, which served as a legal basis for a final judicial or administrative decision by which his or her rights, freedoms of obligations were determined, are incompatible with the Constitution.

COMPLAINTS

The applicant complains that his efforts to repossess the farms of his legal predecessor nationalised in 1969 and 1972 were unsuccessful and that he did not receive compensation. He relies in this respect on Article 1 of Protocol No. 1 to the Convention.

The applicant submits that the courts refused to examine on the merits his requests for restitution of property and compensation.

He further complains that the judicial decisions concerning his social insurance entitlements are unlawful. He submits that all judicial decisions given in the cases to which he was a party were erroneous, unjustified and irrelevant.

He further complains that he could not lodge a constitutional complaint with the Constitutional Court against the judgments given in the proceedings concerning his social insurance entitlements.

The applicant invokes Articles 6 and 13 of the Convention

THE LAW

1. Insofar as the applicant's complaints relate to a period prior to 1 May 1993, the Court recalls that Poland recognised the competence of the European Commission of Human Rights to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". According to Article 6 of Protocol No. 11 this limitation shall remain valid for the jurisdiction of the Court under that Protocol.

It follows that this part of the application is outside the competence *ratione temporis* of the Court and is therefore inadmissible as incompatible with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

2. The applicant further complains under Article 1 of Protocol No. 1 to the Convention that his efforts to obtain restitution of land, which had belonged to his father, were unsuccessful.

Article 1 of Protocol No. 1 in its relevant part 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 Court observes that Poland ratified Protocol No. 1 on 10 October 1994. It follows that, in accordance with the generally recognised principles of the international law, the Court is competent to examine this complaint insofar as it relates to events, which occurred after that date.

The Court further recalls that, according to the Convention organs' case-law, a person complaining of an interference with his property must show that such right existed (Eur. Com. HR, no. 7655-7657. Dec. 4.10.1977, D.R. 12, p. 111). Moreover, Article 1 of Protocol No. 1 does not recognise any right to become the owner of property (Eur. Comm. HR, no. 11628/85, Dec. 9.5.1986, D.R. 47, p. 270).

The Court further recalls that "possessions" within the meaning of Article 1 of Protocol No. 1 may be either "existing possessions" (the Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, § 48) or claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (the Pine Valley Developments and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 23, § 51; Pressos Compania Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, § 31).

The Court considers that it is obvious that the present case does not concern any "existing possessions" of the applicant since the property of the applicant's father was taken over by the State Treasury by administrative decisions given in 1969 and 1973 and it was by virtue of these decisions that the applicant's father property rights were extinguished.

It remains to be examined whether the applicants could have any "legitimate expectation" of realising their claim to restitution of property. It is true that he contends that the decisions by which his father's property was taken over by the State were in breach of the laws setting out the criteria for expropriation as applicable at the material time. However, even assuming that the applicant had submitted this argument to any of the domestic authorities, the Court notes that the 1991 State Treasury Land Property Act excluded the judicial review of any decisions arising out of the application of the Agricultural Property Regulation Act of 1971. It is true that the main objective of the 1991 act was to expressly exclude access to court in the cases concerning agricultural property in the interest of legal certainty. However, it also affected the applicant's situation in that it ultimately nullified any possible claim to property of the land in question that the applicant might have had until the date of entry of this Act into force, i.e. 1 January 1992.

It follows that the applicant has not shown that he has any relevant "existing possessions" or any legally recognised claims, which could be regarded as "legitimate expectations" of enjoying property rights. Moreover, the Convention does not guarantee a right to restitution of property (cf., *mutatis mutandis*, no. 23131/93, Dec. 4.3.1996, D.R. 85-A, p. 65, no. 25497/94, Dec. 17.5.1995, D.R. 85-A, p. 126).

This part of the application is therefore incompatible *ratione materiae* with the provisions of the Convention and must be rejected under Article 27 § 2 of the Convention.

The applicant further complains under Article 1 of Protocol No. 1 that that his request to be awarded veteran status was not granted.

The Court observes that under applicable statutes the veteran status, sought by the applicant, gives rise to various special employment and social insurance entitlements. The Court recalls that the social insurance rights are pecuniary rights for the purposes of Article 1 of Protocol No. 1 (the Gaygusuz v. Austria judgment of 16 September 1996*, Reports of Judgments and Decisions* 1996, p. 1142, §§ 39-41). However, even assuming that the applicant exhausted relevant domestic remedies, this provision of the Convention does not recognise any right to become the owner of property (Eur. Comm. HR, no. 11628/85, Dec. 9.5. 1986, D.R. 47, p. 270).

The Court notes that the applicant complains that he was not awarded this status which would entitle him to acquire certain social insurance benefits. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected under Article 35 § 4 of the Convention.

3. The applicant further raises various complaints under Article 6 of the Convention.

Article 6 of the Convention, insofar as relevant, reads:

"1. In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

a) The applicant first complains that the judicial decisions, issued in the cases concerning his social insurance entitlements, were erroneous.

The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see the Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45 and 46; the Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, to be published in the Court's official *Reports*).

In the present case, the Court notes that, even assuming that the applicant exhausted relevant domestic remedies by lodging a cassation appeal with the Supreme Court, the essence of the applicant's complaints relate to the outcome of the judicial proceedings. The applicant does not allege that the proceedings were unfair but calls into question the content of the judicial decisions in question. The Court sees no indication that the applicant was hindered in any manner from arguing his case effectively and that his right to have a fair trial was impaired in any way.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

b) The applicant further complains that he could not lodge a constitutional law complaint with the Constitutional Court against the decisions given in the proceedings concerning his social insurance entitlements.

The Court recalls that Article 6 of the Convention does not guarantee a right of access to a court with competence to invalidate or override a law (no. 14324/88, Rep. 14.9.1991, D.R. 69 p. 227).

It follows that his part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

c) The applicant further complains under Article 6 of the Convention that he did not have access to court competent to examine his restitution and compensation claim.

The Court considers that in the light of the above conclusion that the applicant does not have either an existing possession or a legitimate expectation of obtaining effective enjoyment of property right, it could not be considered that the proceedings at issue concerned the applicant's civil rights and obligations within the meaning of Article 6 § 1 of the Convention. Therefore this provision is not applicable and, consequently, the right of access to court for the applicant cannot be derived from this provision.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President