CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51832/99
by Marian FUTRO
against Poland

The European Court of Human Rights (Fourth Section), sitting on 12 December 2000 as a Chamber composed of

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 22 December 1998 and registered on 14 October 1999,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

Commented [Note1]: Judges names are to be followed by a **COMMA** and a **MANUAL LINE BREAK** (Shift+Enter). When inserting names via *AltS* please remove the substitute judge's name, if necessary, and the extra paragraph return(s). (There is to be no extra space between the judges' names and that of the Section Registrar.)

THE FACTS

The applicant is a Polish national, born in 1951 and living in Poznań, Poland.

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

The applicant, his father and his two brothers were the co-owners of real property in Poznań. It consisted of a number of plots of land. In 1975 their property was expropriated for the benefit of a state-owned company. The expropriation was effected by virtue of a notarial deed concluded between the co-owners and the State Treasury, whereby title to the property was acquired by the latter and the co-owners were compensated pursuant to Section 6 of the Law of 12 March 1958 on Expropriation (*Ustawa o zasadach i trybie wywłaszczania nieruchomości*). On an unspecified date, the company was awarded the so-called "right of perpetual use" (*użytkowanie wieczyste*) of the property.

1. Facts prior to 1 May 1993

In February 1990 the applicant and one of his brothers lodged an application for restitution of the expropriated land with the Poznań Municipality (*Urząd Miejski*) under Section 69 of the Law of 29 April 1985 on the Land Administration and Expropriation (*Ustawa o gospodarce gruntami i wywłaszczaniu nieruchomości*). This Section stipulated that the former owner (or his legal successor) of the expropriated property could lodge an application for restitution provided that the property had no longer served a purpose specified in the expropriation decision.

On an unknown later date the other co-owners joined the proceedings; however, until the beginning of 1991 no decision had been made.

On 12 February 1991, on an appeal by the applicant's brother, the Poznań Governor (*Wojewoda Poznański*) ordered the Poznań Mayor (*Prezydent Miasta*) to issue a decision by 31 March 1991. The Poznań Mayor did not comply with the prescribed time-limit.

On 1 May 1991, the Poznań District Office (*Urząd Rejonowy*) became the organ competent to deal with the applicant's case. On 13 June 1991 the case-file was transferred to the District Office.

On 12 July 1991 the Poznań District Office held a viewing of the site.

On 15 July 1991 the Poznań District Office issued a decision and determined that one of the expropriated plots had ceased to serve the purpose indicated in the expropriation decision. The proceedings concerning other plots were pending.

On 5 November 1991, on the applicant's appeal, the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) ordered the Head of the Poznań District Office (*Kierownik Urzędu Rejonowego*) to issue a decision on restitution within a month. The Poznań District Office did not comply with the order.

On 17 June 1992 the District Office held the so-called "administrative hearing" (*rozprawa administracyjna*).

On an unspecified date, the Poznań District Office ordered that expert evidence be obtained. On 11 February 1993 the expert submitted his report.

2. Facts after 1 May 1993

On 30 June 1993 the Head of the Poznań District Office issued a decision to the effect that part of the property be returned to the applicant and other co-owners. It also ordered them to pay to the State Treasury the so-called "indexed" (*zwaloryzowana*) sum in return for the compensation which they had received in 1975.

The applicant's brother and the company (the perpetual user of the property) appealed. On 27 September 1993 the Poznań Governor quashed the first-instance decision and remitted the case.

On 28 October and 9 December 1993 the District Office requested the respondent company to produce documentary evidence.

On 24 March 1994 the District Office held an administrative hearing.

On 20 June 1994 the District Office ordered that a plan concerning the partition of the property be drawn.

On 20 December 1994 the District Office decided that expert evidence be obtained in order to determine the value of the property to be restored. On 23 January 1995 the expert submitted her report. On 20 March 1995 the District Office informed the applicant that he could make his observations on the report.

In the course of the proceedings, the applicant's father died. On 27 March 1995 the Poznań District Court declared that one of the applicant's brothers and his children had inherited the property of the applicant's father.

On 21 April 1995 the District Office held an administrative hearing.

In November 1995 the District Office ordered that yet another expert report be obtained.

On 17 July 1996 and 24 July 1997 the District Office requested the relevant authorities for information about the infrastructure of the street situated along the property in question.

On 1 January 1998 the Law of 21 August 1997 on the Land Administration (*Ustawa o gospodarce nieruchomościami*) came into force. On that date the Poznań Governor became the organ competent to deal with the applicant's case.

On 30 March 1998 an administrative hearing was held.

On 15 June 1998 the authorities informed the applicant that a new time-limit for the issue of a decision determining the case was set for 30 September 1998.

On 3 August 1998 the Poznań Governor informed the applicant that he could consult the expert report concerning the value of the property (*operat szacunkowy*).

On 25 September 1998 the Poznań Governor held an administrative hearing.

On 30 September 1998 the expert report was modified.

On 30 December 1998 the Poznań Governor issued a decision ordering that some part of the property be returned to the applicant and other co-owners because it had no longer served the purpose specified in the expropriation decision. The Poznań Governor ordered the co-owners to pay to the State Treasury the indexed sum in return for the compensation awarded to them in 1975.

On an unspecified date, the applicant's brother and the respondent company appealed against that decision to the President of the Office for Housing and Town Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*). On 8 February 1999 the Poznań Governor transmitted both appeals to the second-instance administrative authority.

In letters of 27 October 1999 and 25 May 2000 the applicant informed the Court that the proceedings were still pending.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

2. He further complains under Article 6 § 1 of the Convention that the administrative authorities did not comply with the judgment of the Supreme Administrative Court of 5 November 1991.

3. Lastly, invoking Article 1 of Protocol No. 1 to the Convention, the applicant complains that he has been unable to enjoy his property rights because of the excessive length of the restitution proceedings.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

2. The applicant further complains under Article 6 § 1 of the Convention that the administrative authorities did not comply with the judgment of the Supreme Administrative Court of 5 November 1991.

However, the Court notes that this complaint relates to the events which took place before 1 May 1993, the date on which Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect.

It follows that this part of the application is inadmissible as being incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to paragraph 4 of that Article.

3. The applicant also complains under Article 1 of Protocol No. 1 to the Convention that he has been unable to enjoy his property rights because of the excessive length of the restitution proceedings.

The Court first observes that Poland ratified Protocol No. 1 on 10 October 1994. Insofar as the applicant's complaint relates to facts or decisions regarding his property rights given prior to that date, the Court recalls that, in accordance with universally recognised principles of international law, a State can only be held responsible in respect of events following the ratification of the Convention. It follows that the Court is competent *ratione temporis* only in respect of events which occurred after 10 October 1994.

In so far as this complaint raises an issue separate from that under Article 6 § 1 of the Convention, the Court recalls that Article 1 of Protocol No. 1 aims at securing the peaceful enjoyment of existing possessions and that it does not guarantee a right to acquire property nor a right to restitution of property (see *Rucińska v. Poland* (dec.), no. 33752/96, 27 January 2000, unpublished, and, *mutatis mutandis*, Lupulet v. Romania, application no. 25497/94, Commission decision of 17 May 1996, Decisions and Reports (DR) 85, p. 133). Moreover, anyone who complains of an interference with one of his or her property rights must show that such a right existed (see Lupulet v. Romania, DR 85, p. 132).

The Court further recalls that, according to the established case-law of the Convention organs, "possessions" can be either "existing possessions" (see the Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, § 48) or assets, including 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 (see the Pine Valley Developments Ltd. and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 23, § 51, and the Pressos Compañía Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, § 31). Furthermore, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (see Mayer and Others v. Germany, applications nos. 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92, Commission decision of 4 March 1996, DR 85, p. 18).

In the present case the applicant brought proceedings before the competent national authorities for restitution of his expropriated property under the Law of 29 April 1985 on the Land Administration and Expropriation. He claimed that the expropriated property had ceased to serve the purpose specified in the expropriation decision and therefore it should be restored to him. The applicant has been seeking to obtain that title to the land which had once belonged to him and his family but which, at the time when the restitution proceedings started, no longer did. Therefore, the restitution proceedings did not relate to "existing possessions".

It follows that this part of the application is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint that the length of the proceedings in his case exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Georg Ress
President