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. 35014/97
by Maria HUTTEN-CZAPSKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 16 September 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ, *appointed to sit in respect of Poland*,
Mr M. FISCHBACH,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 6 December 1994,

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 regard to the Court's partial decision of 16 November 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Maria Hutten-Czapska, is a French national of Polish origin. She was born in 1931 and lives in Andresy, France. She is represented before the Court by Mr B. Sochański, a lawyer practising in Szczecin, Poland. The respondent Government are represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The applicant owns a house and a plot of land in Gdynia, Poland. The house was built in 1936 as a one-family house. It originally consisted of a duplex apartment, basement and attic. The property previously belonged to the applicant's parents.

1. Events before 10 October 1994

During the Second World War, officers of the German Army lived in the house. In May 1945 the Red Army took it over and placed its officers there for some time.

On 19 May 1945 the Head of the Housing Department of the Gdynia Municipality (*Kierownik Wydzialu Mieszkaniowego Magistratu Miasta Gdynia*) issued a decision assigning the first-floor part of the duplex apartment to A.Z.

In June 1945 the Gdynia Town Court (*Sąd Grodzki*) ordered that the house be returned to the applicant's parents. They began renovation of the house but, shortly afterwards, were ordered to leave their estate. In October 1945 A.Z. moved into the house.

On 13 February 1946 the Decree of 21 December 1945 on the State Management of Housing and Lease Control (*Dekret o publicznej gospodarce lokalami i kontroli najmu*) entered into force. Under its provisions the house was taken under the so-called "state management of housing matters" (*publiczna gospodarka lokalami*).

In 1948, at a public auction, the authorities unsuccessfully tried to sell the house to A.Z., who was at that time employed in the Gdynia Municipality, an authority responsible for the state management of housing matters. At about the same time, the applicant's parents, likewise unsuccessfully, tried to regain their property.

On 1 August 1974 the 1974 Housing Law (*Prawo lokalowe*) entered into force. It replaced the state management of housing matters with the so-called "special lease scheme" (*szczególny tryb najmu*) (see also "Relevant domestic law and practice" below).

On an unknown date in 1975 W.P., who was at that time the Head of the Housing Department of the Gdynia Municipality (*Kierownik Wydziału Spraw Lokalowych Urzędu Miejskiego*), tried to buy the house from the applicant's brother.

On 8 July 1975 the Gdynia Mayor issued a decision allowing W.P. to exchange the flat he leased under the special lease scheme for the ground-floor flat in the applicant's house. That decision was signed on behalf of the Gdynia Mayor by a civil servant who was subordinate to W.P. On 28 January 1976 the Gdynia Municipality issued a decision confirming that under the provisions governing the special lease scheme the flat had been let to W.P. for an indeterminate time. In the 1990s' the applicant tried to have that decision declared null and void but she only succeeded in obtaining a decision declaring that it had been issued contrary to the law see also "Administrative proceedings" below).

On 24 October 1975 the Head of the Local Management and Environment Office of the Gdynia Municipality (*Kierownik Wydziału Gospodarki Terenowej i Ochrony Środowiska Urzędu Miejskiego w Gdyni*) ordered that the house be taken under state management (*przejęcie w zarząd państwowy*). That decision took effect on 2 January 1976.

On 3 August 1988 the Gdynia District Court (*Sąd Rejonowy*), ruling on an application made by A.Z.' relatives, gave judgment declaring that, after the death of A.Z., her daughter (J.P.) and son-in-law (M.P.) had inherited the right to lease the first-floor flat in the applicant's house.

On 18 September 1990 the Gdynia District Court made a decision declaring that the applicant had inherited the property of her parents. On 25 October 1990 the Gdynia District Court entered her title in the relevant land register.

In October 1990 the applicant took over the management of the house from the Gdynia Municipality. In 1991 she began to refurbish the house.

On an unspecified date in 1991, W.P. filed an action for repossession against the applicant. On 28 April 1992 the Gdynia District Court ordered that the applicant surrender to W.P. possession of the basement, boiler-room, laundry and drying room.

On an unknown date in the 1990s the applicant set up a private foundation called the Amber Trail Foundation. Since then, she has been making unsuccessful efforts to locate the seat of the Foundation in her house.

2. Events after 10 October 1994

After taking over the management of the house, the applicant initiated several sets of proceedings – civil and administrative – in order to regain her property.

(a) Proceedings before civil courts

(i) Eviction proceedings

On 16 June 1992 the applicant asked the Gdynia District Court to order the eviction of her tenants. In April 1993, on the defendants' request, those proceedings were stayed. On 26 April 1996 the Gdynia District Court dismissed her claim. The applicant did not appeal against that judgment. Later, she unsuccessfully asked the court to grant her retrospective leave to appeal out of time.

(ii) Proceedings concerning the relocation of tenants and compensation

In April 1995 the applicant asked the Gdańsk Regional Court (*Sąd Wojewódzki*) to order that the Gdynia Municipality relocate the tenants living in her house to dwellings owned by the Municipality itself. She further asked the court to award her compensation for depriving her parents and herself of any opportunity to live in their own house, for damage to the property and arbitrary alteration of its use, and for moral suffering. She also claimed damages based on other grounds. On 5 July 1996 the Regional Court ruled that, under the Law of 2 July 1994 on the Lease of Dwellings and Housing Allowances (*Ustawa o najmie lokali mieszkalnych i dodatkach mieszkaniowych*), ("the 1994 Act") the Municipality had no obligation to relocate the tenants to its own dwellings. It dismissed the remaining claims.

The applicant appealed. In her appeal, she also claimed extra compensation for the financial loss she had sustained as a result of the issue of the – in her view – unlawful administrative decisions of 1945 and 1975 respectively, under which the tenants had been granted the right to lease flats in her house for an indeterminate time.

On 17 January 1997 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed her appeal. It observed that no provision of the 1994 Act obliged the Municipality to relocate the applicant's tenants or, at her request, to provide them with alternative dwellings. The relevant provisions of the 1994 Act, namely section 56 § 7 read together with paragraph 4 of that section; (see also "Relevant domestic law and practice" below), stipulated that a tenant had to vacate a dwelling only if the owner had offered him his or her own flat or the municipality had agreed to provide the tenant with an alternative dwelling (*lokal zastępczy*) owned or administered by it. As regards the applicant's claim for damages for financial loss sustained as a result of the issue of the administrative decisions, the Court of Appeal observed that such claims could be determined by the courts of law only if a plaintiff had first applied for compensation to the administrative authorities and the outcome of the relevant administrative proceedings had been unfavourable. It referred the applicant to the Code of Administrative Procedure (*Kodeks postępowania administracyjnego*), which set out the

rules governing the liability of public authorities for the issue of wrongful decisions.

In so far as the applicant asked for compensation for damage to the house and alteration of its use, the Court of Appeal considered that the Gdynia Municipality could not be held liable for the consequences of the laws which had previously been in force. In particular, the defendant was not liable for the enactment of the post-war legislation which had introduced restrictive rules concerning the lease of dwellings in privately-owned houses and the state management of housing matters itself. It was not liable for the implementation of the special lease scheme introduced by the 1974 Housing Law and the operation of the 1994 legislation which incorporated certain similar rules in respect of the protection of tenants whose right to lease flats in privately-owned houses had been conferred on them by administrative decisions. Lastly, the court noted that the Gdynia Municipality could not be liable for any damage caused by the applicant's tenants.

Subsequently, the applicant lodged a cassation appeal (*kasacja*) with the Supreme Court (*Sąd Najwyższy*). On 13 November 1997 the Supreme Court rejected that appeal on formal grounds. The court held that the applicant had not complied with the relevant formal requirements, in particular she had not specified the errors of substantive civil law allegedly committed by the lower courts.

(iii) Proceedings concerning the determination of rent filed by W.P. against the applicant

On an unspecified date in 1995, W.P. asked the Gdynia District Court for a judgment determining the amount of the rent to be paid by him. On 20 March 1996 the District Court gave judgment and determined the amount of rent at 33,66 Polish zlotys per month. It awarded the costs of proceedings of 528,90 Polish zlotys against the applicant.

(b) Administrative proceedings

(i) Proceedings concerning the annulment of the decision of 19 May 1945

In October 1995 the applicant asked the Gdańsk Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) to declare the decision of the Head of the Housing Department of the Gdynia Municipality of 19 May 1945 null and void. Under that decision, the first-floor flat in the house was assigned to A.Z and A.Z.'s successors' right to lease that flat in the applicant's house originated in it (see also "Events before 10 October 1994" above).

The Board noted that the impugned decision had been made under the provisions of the Decree of the Polish Committee of National Liberation on the Housing Commissions of 7 September 1944 (*Dekret Polskiego Komitetu Wyzwolenia Narodowego o komisjach mieszkaniowych*), a law which had at

the relevant time governed all housing matters. It found that the decision had not been issued by the competent public authority and that, in consequence, had not been lawful. Yet the Board could not declare the decision null and void (*stwierdzić nieważność decyzji*) because, pursuant to Article 156 § 2 of the Code of Administrative Procedure, if more than ten years had elapsed from the date on which the unlawful decision had been made, the Board could only declare that the decision "had been issued contrary to the law" (*została wydana z naruszeniem prawa*).

The applicant appealed to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). On 15 January 1998 the court dismissed her appeal because she had not exhausted an obligatory legal remedy, i.e. she had not made an application to the Board for the matter to be reconsidered (*wniosek o ponowne rozpatrzenie sprawy*).

The applicant subsequently made such an application. On 23 June 1998 the Board upheld its decision of 26 June 1997. The applicant appealed to the Supreme Administrative Court. The Gdańsk Regional Prosecutor (*Prokurator Wojewódzki*) joined the proceedings and lodged an appeal on the applicant's behalf.

On 8 June 1999 the Supreme Administrative Court rejected both appeals. It confirmed that the impugned decision had been unlawful. It added that it had several procedural shortcomings (for instance, the applicant's parents had not been notified of the proceedings and had never had any opportunity to challenge the decision; no legal basis had been given for it), but, in accordance with Article 156 § 2 of the Code of Administrative Procedure, the court could not annul the decision but could only declare that it had been issued contrary to the law. In passing, the court observed that the above-mentioned procedural shortcomings could be rectified by means of reopening the proceedings.

(ii) Proceedings concerning the annulment of the decision of 8 July 1975

In 1992 the applicant asked the Gdańsk Self-Government Board of Appeal to declare the decision of the Gdynia Mayor of 8 July 1975 null and void (see also "Events before 10 October 1994" above). W.P.'s right to lease the ground-floor flat in the applicant's house originated in that decision.

On 27 January 1994 the Board rejected the applicant's request. She appealed to the Supreme Administrative Court. On 14 June 1995 the court dismissed her appeal. It found that the flats in the applicant's house had been let under the special lease scheme introduced by the 1974 Housing Law and that, accordingly, the Mayor had been competent to issue the decision in question. It further observed that, despite some procedural errors committed by the Gdynia Mayor (which could be rectified by means of reopening the proceedings), the decision had had a legal basis and could not, therefore, be declared null and void.

On 17 September 1994 the applicant asked the Gdynia Mayor to reopen the relevant proceedings and to declare the impugned decision null and void. The Mayor rejected her application as being lodged out of time.

On 29 December 1995 the Gdańsk Self-Government Board of Appeal, of its own motion, reopened the proceedings. It found that the contested decision had been made on behalf of the Gdynia Mayor by a civil servant who had been W.P.'s subordinate and that that fact had in itself constituted a sufficient ground for reopening the proceedings, pursuant to Article 145 §1 (3) of the Code of Administrative Procedure. That fact had also rendered the decision unlawful. However, since more than five years had elapsed from the date on which the decision had been given, the Board could not annul it. It could merely declare that it had been issued contrary to the law, as laid down in Article 146 § 1 of the Code of Administrative Procedure.

The applicant appealed to the Supreme Administrative Court, alleging that the decision had never been served on the owners of the house and that it should have been declared null and void. On 28 November 1996 the court dismissed her appeal.

(iii) Proceedings concerning the annulment of the decision of 24 October 1975

On 4 October 1994 the applicant asked the Gdynia Municipality to reopen the administrative proceedings terminated by the decision of the Head of the Local Management and Environment Department of the Gdynia Municipality of 24 October 1975. By virtue of that decision, the applicant's house had been taken under the state management (see also "Events before 10 October 1994" above). She further asked that the decision be declared null and void, submitting that it had lacked any legal basis. In particular, the house had incorrectly been classified as a "tenement-house" (*dom wielorodzinny*), whereas in reality it was, and always had been, a one-family house and, as such, should not have been taken under the state management. The decision, the applicant added, had been made solely for the personal benefit and gain of W.P. who had at that time been the Head of the Housing Department of the Gdynia Municipality. In her view, it had been made to sanction the prior – and likewise unlawful – decision of 8 July 1975 whereby W.P. had acquired the right to lease the flat in her house.

On 7 December 1994 the Gdynia Mayor rejected her application, finding that she had lodged it outside the prescribed time-limit. On 12 June 1995 the Gdańsk Self-Government Board of Appeal upheld the Mayor's decision. Subsequently, the applicant appealed to the Supreme Administrative Court. On 14 November 1996 the court quashed both decisions because the Gdynia Mayor had not been competent to rule on the application.

On 27 February 1997 the Gdańsk Self-Government Board of Appeal reopened the proceedings terminated by the decision of 24 October 1975. On 28 April 1997 the Board declared that that decision had been issued

contrary to the law because the owners of the house had not been notified of the proceedings. It found that the Gdynia Municipality had not acted with due diligence as it had not made efforts to establish who had been the rightful successors of the owners of the house (that is to say, the applicant and her brother who had - on a regular basis - paid the relevant taxes on the property to the municipality). Relying on Article 146 § 1 of the Code of Administrative Procedure, the Board refused to annul the decision because more than five years had elapsed from the date on which it had been given.

B. Relevant domestic law and practice

1. The so-called "state management of housing matters" and "administrative lease scheme"

The Decree of the Council of Ministers of 21 December 1945 on the State Management of Housing and Lease Control (*Dekret z 21 grudnia 1945 r. o publicznej gospodarce lokalami i kontroli najmu*), which came into force on 13 February 1946, introduced the so-called "state management of housing matters" (*publiczna gospodarka lokalami*) which also applied to dwellings or commercial premises in privately-owned buildings.

Later, on 1 September 1948, the Decree of 28 July 1948 on the Lease of Dwellings (*Dekret o najmie lokali*) entered into force. Under its provisions, the state authorities administered all the housing matters in the state and private sector alike. The public authorities were given power to issue a decision assigning to a tenant a particular flat in a privately owned building. Those provision also laid down rules concerning rent control.

The 1974 Housing Law (*Prawo lokalowe*) introduced the so-called "special lease scheme", which replaced the "state management of housing matters", although it did not significantly change the principles on which the right to lease was based. For instance, the right to lease a flat in a building taken under the "state management" did not originate in a civil contract but was conferred on a tenant by an administrative decision. The owner of such a building had no say in respect of who could dwell in his or her house and for how long. The special lease scheme applied to dwellings and commercial premises.

Decisions on "allocating to a dwelling" (*przydział lokalu*) were, for all practical purposes, tantamount to "granting" a right to lease a dwelling (or commercial premises) under the special lease scheme. They were issued by the relevant departments of the municipalities (depending on which of the many reforms of the system of public administration was carried out, those departments were called variously: "housing departments", "departments of local management and environment", "dwelling departments", etc.).

2. The 1994 Act

(a) Abolition of the "special lease scheme" under the 1994 Act

The Act entered into force on 12 November 1994. It was intended to bring about a reform of the law governing the relationship between landlords and tenants. Although it abolished the "special lease scheme" and relaxed the control of rent by, for instance, allowing rents of dwellings to be market-related and determined completely freely in civil contracts between landlords and tenants, it maintained (and still maintains) the control of rent of residential dwellings in which the right to lease a flat had been conferred on a tenant by an administrative decision.

The 1994 Act introduced the so-called "controlled rent" (*czynsz regulowany*) and set out detailed regulations on the calculation of rents of residential dwellings which had so far been subject to the "special lease scheme". The provisions concerning the controlled rent, the *ratio legis* of which was to protect tenants in a difficult financial situation during the transition from a state-controlled to a free-market housing system, were to remain in force until 31 December 2004.

The Act maintained, albeit with slight modifications of wording, the rules concerning the protection of tenants against termination of leases continued on the basis of previous administrative decisions and the right of succession to a lease.

(b) Succession to the right to lease a flat

Section 8 § 1 of the Act read:

> "1. In case of death of a tenant and on condition that they have lived in the household of a tenant until his death, his descendants, ascendants, adult siblings, adoptive parents or adopted children and the person who has lived with a tenant in de facto marital cohabitation, shall succeed to the tenancy agreement and acquire the tenant's rights and obligations connected with [the lease of] the flat, unless they relinquish that right to the landlord. This provision does not apply to persons who, when the [original] tenant died, have had title to another residential dwelling.
>
> 2. In cases where there is no successor to the tenancy agreement, or where the successors have relinquished their right, the lease shall expire."

(c) Rent control

Section 20 set out the following:

> "1. Under the lease agreement the tenant is obliged to pay the rent.
>
> 2. In cases provided for by the present statute, the rent shall be determined in a manner specified in this law itself (controlled rent). In other cases the rent shall be determined freely.

3. The rent shall be determined with reference to the physical state of the building in question, its surface and the condition of the flat and other factors which raise or reduce the flat's value.

4. The parties shall specify the rent in their agreement."

Section 25 provided:

"1. Subject to the reservation stipulated in section 66, the controlled rent shall be paid by tenants of dwellings belonging to municipalities, the State Treasury, state legal persons or legal persons administering dwellings for non-profit-making purposes, except for housing co-operatives.

2. The maximum controlled rent must not exceed 3% of the reconstruction value of the dwelling (*wartość odtworzeniowa lokalu*) per annum.

3. The reconstruction value of the flat shall be the product of its usable area and conversion index of 1 square metre of the usable area of the building.

4. The [relevant] Governor shall, by means of an ordinance issued quarterly, determine the conversion index of 1 square metre of the usable surface of the residential building."

Under the transitional provisions of the Act the right to lease a flat conferred on a tenant by an administrative decision was to be treated as a lease originating in a lease contract, concluded under the relevant provisions of the Civil Code. Tenants of such flats were entitled to pay the controlled rent until 31 December 2004.

Under section 55 of the Act the lease of a flat which originated in an administrative decision issued under the 1974 Housing Law was to remain in force.

Section 56 laid down further regulations in respect of such "administrative lease". It provided, in so far as relevant:

"1. Under this law, a lease which has originated in an administrative decision on allocation of a flat, or has had another legal basis [that existed] before in a given locality the state management of housing or special lease scheme was introduced, shall be treated as a contractual lease concluded for an indeterminate time under the provisions of this law.

2. Until 31 December 2004 inclusive, the rent for flats let in the manner specified in paragraph 1 which are located in dwellings owned by natural persons, shall be determined in accordance with the provisions concerning the controlled rent.

...

4. If the owner, referred to in paragraph 2, intends to dwell in his flat and with that intention has vacated the flat which he has hitherto let ... from the municipality, the tenant shall be obliged to vacate the owner's flat and to move into the flat [proposed to him], provided that the [condition of] the flat in question complies with the requirements laid down by this law in respect of alternative dwellings. If such is the case, the owner can terminate the lease under section 32 § 2.

...

6. If the owner's adult child or his parents are to dwell in his flat, paragraph 4 ... shall apply by analogy.

7. If the landlord has offered the tenant the alternative dwelling he owns himself or if, at the owner's request, such an alternative dwelling has been provided by the municipality, paragraph 4 shall apply by analogy."

(d) Landlord's duties in respect of maintenance of the property

Section 9 of the Act set out a detailed list of the landlord's duties under the tenancy. It applied both to landlords letting flats for a freely-stipulated, market-related rent and to landlords receiving the controlled rent. It also listed maintenance works to be carried out by landlords under lease agreements. That section provided, in so far as relevant:

"1. The landlord shall ensure that the existing technical facilities in the building are in working order; shall enable the tenant to use lighting and heating in the dwelling; shall ensure that the dwellings are supplied with cold and hot water and shall ensure the use of lifts, collective aerial and other facilities in the building;

...

3. The landlord in particular shall:

1) maintain in working order and keep clean common premises and facilities in the building; the same should apply to the vicinity of the building,

2) carry out repairs in the building and its dwellings and facilities, and restore any building which has been damaged, regardless of the cause of such damage; however, the tenant shall bear the costs of restoring damage for which he is liable;

3) carry out repairs in the dwellings, repair or replace the installations and technical facilities and, especially, carry out such repairs for which the tenant is not responsible, in particular he shall:

a) repair and replace the water supply installation in the building, the gas and hot water supply installations, as well as repair and replace the sewage, central heating (together with radiators), electric, telephone and collective aerial installations – the latter, however, without fittings;

b) replace or repair furnaces, window and door woodwork, floors, floor linings and plaster works.

..."

(e) Termination of the lease in respect of tenants paying controlled rent

In practice, if such a tenant had not fallen into more than 2 months arrears of controlled rent, the lease could not be terminated unless he used

the flat "in a manner inconsistent with its function", damaged the flat or the building, repeatedly and flagrantly disturbed the peace and upset order or had sublet the flat without obtaining the prior consent of the landlord (sections 31-32 of the 1994 Act).

3. Rulings of the Constitutional Court on the constitutionality of certain provisions of the 1994 Act

(a) Judgment of 12 January 2000

On 12 January 2000 the Constitutional Court (*Trybunał Konstytucyjny*), ruling on a legal question referred to it by the Supreme Court, declared that section 56 § 2 taken together with sections 25 and 26 of the 1994 Act were unconstitutional. The Court found that they were in breach of Article 64 § 3 read in conjunction with Articles 2 and 31 § 3 of the Constitution and Article 1 of Protocol No. 1 to the Convention because they had put a disproportionately heavy and, from the point of view of the permitted restrictions on the right of property, unnecessary financial burden on the exercise of property rights by landlords owning flats subject to rent control.

The court held that the unconstitutional provisions be repealed on 11 July 2001. That in practice meant that by that date Parliament (*Sejm*) had to enact new, constitutional legislation dealing with the matter.

Before giving its judgment, the Constitutional Court asked the President of the Office for Housing and Town Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) for information concerning the implementation of the 1994 Act and, more particularly, the manner of determining the "conversion index of 1 square meter of the usable surface of the building" referred to in section 25 of the Act. According to the information received, the controlled rents had never reached the statutory 3% of the reconstruction value of the dwelling (referred to in section 25 § 2) but were determined by the municipalities at 1.3%. As a result, the controlled rents covered merely 60% of the costs of maintenance of residential dwellings. The rest had to be covered by the owners from their financial resources.

In the judgment, the Constitutional Court attached much importance to the fact that the relevant regulations concerning the controlled rent brought about a situation whereby the expenses incurred by owners of dwellings were much higher than the rent paid by tenants and that the former "had no influence on how the controlled rent rates were determined". In its view, that shortfall of the rent actually received resulted in the progressive reduction of value of tenement houses and this, with the passage of time, entailed consequences similar to expropriation.

The judgment contains extensive reasoning, the gist of which is as follows:

– even though it can be said that certain restrictions put on the exercise of property rights by natural persons who owned dwellings subject to the controlled rent were "necessary in the democratic society", in particular such restrictions as those put on the amount of rent to be received, the situation in which the rents did not cover a significant part of the costs of maintenance of dwellings meant that the relevant provisions deliberately set the controlled rents below the costs and expenses actually incurred by owners;

– the 1994 Act laid the main burden of sacrifices that society had to make for tenants in a difficult financial situation on the owners of property. No proportionality had been maintained in that respect. Nor could any constitutional considerations justified laying such a burden on them;

– all the relevant regulations concerning the lease of privately-owned flats had a cumulative effect of stripping the landlords of fundamental elements of the right of property.

(b) Judgment of 10 October 2000

In its judgment of 10 October 2000 the Constitutional Court held that section 9 of the 1994 Act, laying down landlords' obligations, was unconstitutional because, in particular, it placed a heavy financial burden on them, a burden which was in no way proportional to the income from the controlled rent. The Constitutional Court held that that provision be repealed on 11 July 2001.

4. The 2001 Act

Following the Constitutional Court's rulings of 12 January and 10 October 2001, Parliament adopted a new law governing housing matters and relations between landlords and tenants. The relevant statute, that is to say, the Act of 21 June 2001 on the Protection of the rights of tenants, housing resources of municipalities and amendments to the Civil Code (*Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego*) ("the 2001 Act") entered into force on 10 July 2001. It repealed the 1994 Act and the previous system of rent control. Instead, it introduced a statutory mechanism that limited the possibility of raising rents by landlords.

Section 9 of the 2001 Act lists situations where a landlord can raise a rent. That provision, in the version applicable until 2 October 2002, read, in so far as relevant:

"1. Increases in rent or other charges for the use of a dwelling, apart from charges that do not depend on a landlord [e.g. those for electricity, water, central heating etc.] may not be made more often than once every 6 months;

2. If a landlord raises other charges that do not depend on him, he shall be obliged to provide a tenant with a table of charges and the reasons for the increase.;

3. In a given year the increase in rent or other charges, except for charges that do not depend on a landlord, shall not exceed the average general yearly increase of prices for consumer goods and services in the previous year over those in the year preceding the previous year by:

(1) 50% - if an annual rent does not exceed 1% of the reconstruction value of the dwelling;

(2) 25% - if an annual rent is higher than 1% but not more than 2% of the reconstruction value of the dwelling;

(3) 15% - if an annual rent is higher than 2% of the reconstruction value of the dwelling.

Information on the increase in prices referred to in the first sentence [of this paragraph] shall be communicated in official bulletins of the President of the Central Statistical Office;

...

8. The reconstruction value of a dwelling shall be the product of its usable area and conversion index of the reconstruction cost of 1 square meter of the usable area of the residential building. „..”

On 11 December 2001 the Ombudsman (*Rzecznik Praw Obywatelskich)* made an application to the Constitutional Court and asked, *inter alia*, that section 9(3) of the 2001 Act be declared incompatible with the constitutional principle of the protection of property rights. The Ombudsman referred to numerous complaints he received from landlords, who claimed that rents as determined under that section did not cover basic costs of maintenance of residential buildings. He also maintained that the recent rules for the determination of rent put landlords at a bigger disadvantage than the ones that had been laid down in the 1994 Act and had already been repealed as being unconstitutional.

The representatives of Parliament and Prosecutor General asked the Constitutional Court to reject the application.

The court further invited organisations of landlords and tenants to take part in the proceedings and submit their observations in writing. The Polish Association of Tenants (*Polskie Zrzeszenie Lokatorów*), the Polish Union of Property Owners (*Polska Unia Właścicieli Nieruchomości*) and the All-Polish Association of Property Owners (*Ogólnopolskie Stowarzyszenie Właścicieli Nieruchomości*) filed their pleadings on 16, 17 and 18 September 2002 respectively.

On 2 October 2002 the Constitutional Court, sitting in the plenary, declared section 9(3) of the 2001 Act unconstitutional as being incompatible with Article 64 §§ 1 and 2 and Article 31 § 3 of the Constitution. The provision was, accordingly, repealed.

The Constitutional Court held that the fact that the 2001 Act had abolished the scheme of rent control had not improved the situation of landlords because, instead, it had introduced a defective mechanism of controlling increases in rents. In its opinion, section 9(3) had not only "frozen" the disadvantageous situation of landlords, a situation which had already been found incompatible with the Constitution, but also, due to the changing economic circumstances, had reduced significantly any possibility of raising the rent to cover expenses incurred by them in connection with the maintenance of property.

The court repeated what it had already stated in its judgment of 12 January 2000, namely, that the relevant provisions laid the main burden of sacrifices that society had to make for tenants in a difficult financial situation on the owners of property. It went on to find that section 9(3) petrified the state of a violation of property rights that subsisted under the 1994 Act, especially as landlords had not been relieved from any of their previous duties in respect of maintenance of property (see also above 2(d)).

5. Relevant constitutional provisions

Article 2 of the Constitution states:

> "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice."

Article 31 § 3 reads:

> "Any limitation on the exercise of constitutional freedoms and rights may be imposed only by statute, and only when it is necessary in a democratic state for the protection of its security or public order, or for the protection of the natural environment, health or public morals, or the freedoms or rights of other persons. Such limitations shall not impair the essence of freedoms and rights."

Article 64 protects the right of property in the following terms:

> "1. Everyone shall have the right to ownership, other property rights and the right of succession.
>
> 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
>
> 3. The right of ownership may be limited only by means of a statute and only to the extent that does not impair the substance of such right."

6. Compensation for loss caused by the issue of an administrative decision

Article 160 of the Code of Administrative Procedure reads, in so far as relevant:

> "A person who has suffered a loss on account of the issuing of a decision in a manner contrary to Article 156 § 1 or on account of the annulment of such a decision

shall have a claim for compensation for actual loss, unless he has been responsible for the circumstances mentioned in this provision."

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 to the Convention that the situation created by the implementation of the laws imposing the fixed and totally inadequate rent amounted to a continuing violation of her right to the enjoyment of her possessions. In her submission, the very essence of her right of property had been impaired since, for all practical purposes, she could neither regain possession and use of her property nor derive any income from it.

THE LAW

The applicant complained under Article 1 of Protocol No. 1 to the Convention that the situation created by the implementation of the laws imposing the fixed, inadequate rent and making it impossible for her to regain possession of her house had amounted to a continuing violation of her property rights.

A. Court's temporal jurisdiction

The Government first maintained that the alleged violations of the applicant property rights had taken place before 10 October 1994, the date on which Poland ratified Protocol No.1 to the Convention.

The applicant disagreed and submitted that the situation in which she found herself had been caused by the enactment of successive laws that limited the rights of landlords and made it impossible for her to enjoy her possessions.

The Court's jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Yağci and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40, and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

Accordingly, the Court is competent to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 10 October 1994, the date of ratification of Protocol No. 1 by Poland. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* no. 31443/96 [GC], § 74 dec. 19 December 2002).

The Court further observes that, indeed, the applicant's complaint is not directed against a single measure or decision taken before, or even after, 10 October 1994 but refers to a continued impossibility of regaining possession of her property and of receiving the adequate rent for lease of her house.

It also notes that it appears to be common ground that the situation complained of have arisen out of laws that applied before the entry into force of Protocol No. 1 in respect of Poland, on the date of the Protocol's entry in force and are still in force.

The Government's plea of inadmissibility on the ground of lack of jurisdiction *ratione temporis* must accordingly be rejected.

B. Exhaustion of domestic remedies

The Government next pleaded that the applicant had failed to exhaust the domestic remedies available to her. In particular, they considered that the applicant should, under Article 160 of the Code of Administrative Procedure, have sued the State Treasury for damages arising from the fact that the authorities had issued the decisions of 19 May 1945 and 24 October 1975 contrary to the law.

The Government further stressed that the applicant had also failed to contest the judgment of the Gdynia District Court of 26 April 1996, dismissing her claim for eviction and that she had not challenged the relevant municipality council' s resolution fixing rates of controlled rent.

The applicant replied that the remedies mentioned by the Government were purely theoretical and had not been capable of providing her with relief because the impossibility of terminating the leases and of receiving a fair rent had been inherent in the defective domestic legislation. In that context, the applicant referred to the Constitutional Court's judgments of 12 January and 10 October 2000, in which that court had held that the relevant laws had a cumulative effect of stripping the landlords of the essence of their property rights.

The Court reiterates that the purpose of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 is to afford Contracting States an opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The State

must have a chance to put matters right through its own legal system before having to answer before an international body for its acts. In consequence, complaints intended to be brought subsequently before the Court in Strasbourg should first have been made – at least in substance – to the appropriate domestic body.

However, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is first incumbent on the respondent Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the aggrieved individuals' complaints and offered reasonable prospects of success (see, *mutatis mutandis*, *Cyprus v. Turkey* no. 25781/94 [GC], ECHR 2001-, § 116: and *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001; unreported).

In the present case, the Court observes that the Government have not explained how the remedies advanced by them would have improved the applicant's situation *vis-à-vis* the continuing situation of which she complained. In particular, the Government have not supplied any examples from domestic practice to demonstrate whether, and if so how, the recourse to those means would make it possible for the applicant to receive a higher rent than the one stipulated in the relevant legal provisions.

In that regard, the Court would also point out that the Constitutional Court, in its judgment of 12 January 2000, found that under the 1994 Act the landlords "had no influence on how the controlled rent rates were determined". In its most recent judgment of 2 October 2002, that court held that the 2001 Act had reduced significantly any possibility of raising the rent to cover expenses incurred by landlords.

The Court considers that the Constitutional Court's findings are valid for the purposes of determining the exhaustion issue and that they support the conclusion that the remedies suggested by the Government would not have provided the applicant with redress in respect of her Convention claim.

The Government's objection on non-exhaustion accordingly fails.

C. Compliance with Article 1 of Protocol No. 1

The Government submitted that the complaint is in any event inadmissible as being manifestly ill-founded.

To begin with, they stressed that the system of rent control had been maintained only temporarily and that there had been compelling reasons justifying the imposition of severe restrictions on the rights of the landlords. The rent control had originated in an extremely difficult situation of housing with which the authorities had been confronted in the 1990s. That situation had consisted in a serious shortage of dwellings combined with high rent rates. It necessitated the maintenance of rent control in order to protect

tenants in a difficult financial situation against increases in rent and evictions.

Furthermore, the Government considered that, while the system whereby the State limited the increases in rent was a form of control of the use of property, it did not impair the very essence of the applicant's property rights because she retained the possibility of disposing of her property and was paid rent for the lease of her house.

In any event, the Government added, the Constitutional Court's judgments of 12 January and 10 October 2000, had already provided the applicant with the appropriate relief at domestic level since the provisions on the rent control had been repealed and the system itself had been abolished.

The applicant disputed that contention and argued that, as the Constitutional Court had held, the authorities had limited her property rights in a manner incompatible both with the Polish Constitution and Article 1 of Protocol No. 1 to the Convention.

The applicant accepted that the State-controlled rent system had been introduced in the public interest. However, she considered that the means employed by the authorities had for all practical purposes extinguished all essential elements of her right of property. She could not terminate the lease contracts even though they had been imposed on her by the unlawful decisions. She had no influence whatsoever on the amount of rent paid by her tenants. Under the applicable laws, the rent was fixed without any reasonable relation to the costs involved in the maintenance of her property. She could not live in her own house unless she had provided the tenants with alternative flats which, given the general shortage of dwellings, was simply impossible.

In view of the foregoing, the applicant considered that the burden imposed on her was disproportionate to the aims sought by the authorities and asked the Court to hold that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits.

No other ground for declaring the application inadmissible has been established.

For these reasons, the Court unanimously

Declares the remainder of the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President