AS TO THE ADMISSIBILITY OF

Application No. 28561/95
by Andrzej KITEL
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 July 1993 by Andrzej KITEL against Poland and registered on 18 September 1995 under file No. 28561/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1935, is a technician residing in Pszczyna.

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

a) Particular circumstances of the case

In 1951 the State took over possession of a property belonging to the applicant's father, a brick-making plant located in Pszczyna.

In 1958 the property was nationalised. In 1960 the Minister of Construction declared this in a decision. Subsequently the plant was in the possession of the Katowice Construction Ceramics Plant (Katowickie Przedsi*biorstwo Ceramiki Budowlanej).

In 1989 the plant was sold to a third party.

In 1990 the applicant requested the Minister of Industry to institute reprivatisation proceedings and to set aside the nationalisation decisions.

On 4 September 1991 the Minister of Industry informed the applicant that administrative proceedings had been instituted in accordance with Article 61 para. 4 of the Code of Administrative Procedure under case-file number PM-Zr-254/91 in order to establish whether the nationalisation decision had been lawful. The applicant was requested to submit information as to the current legal and factual situation of the property.

On 10 June 1992, in reply to a query from the President's Office, to which the applicant had complained about the lack of progress in the proceedings, the Ministry informed the applicant that the decision would be issued before the end of October 1992.

On 22 December 1992, in reply to the Ombudsman's query as to the progress in the proceedings, the Ministry informed him that the applicant's case had been given priority. However, the decision had not been pronounced in view of the fact that it had so far been impossible to find in the State Archives a copy of the inventory of the plant made at the time of its takeover by the State in 1951. This document was of crucial importance for the decision to be taken. Further efforts would be made to find it.

On 12 August 1994 the applicant complained to the Supreme Audit Chamber about the lack of progress in the proceedings. He submitted that the plant concerned had not met the nationalisation criteria as it employed 35 persons, whereas only plants employing more than 50 persons per shift had been subject to nationalisation. He submitted that the former owners had never signed or been served with a copy of the inventory to which the Ministry referred in its letter of 22 December 1992.

On 18 July 1994 and on 1 July 1995 the applicant again complained to the Ombudsman about the lack of progress in the proceedings. He submitted that the entry in the land register relating to the property disclosed that the State Treasury was still the owner of the plant.

b) Relevant domestic law

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, Article 156 para. 1 states that a final administrative decision can be annulled if it has been issued without a legal basis or contrary to applicable laws.

COMPLAINTS

The applicant complains under Article 1 of the Protocol No. 1 that his right to enjoyment of possessions has been breached by the failure of the Ministry of Industry to issue a decision setting aside the nationalisation decisions of 1958 and 1960. The applicant argues that the property concerned should not have been nationalised as it did not meet the relevant criteria set out in the nationalisation laws.

THE LAW

The applicant complains under Article 1 of Protocol N° 1 (P1-1) that his right to enjoyment of possessions has been breached by the failure of the Ministry of Industry to issue a decision setting aside the nationalisation decisions of 1958 and 1960.

Article 1 of Protocol No. 1 (P1-1) to the Convention, insofar as relevant, 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 Commission observes that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. It follows that the Commission is competent to examine this complaint insofar as it relates to events which occurred after that date.

The Commission recalls that, according to the Convention organs' case-law, a person complaining of an interference with his property must show that a property right existed (No. 7655-7657/76, Dec. 4.10.77, D.R. 12, p. 111). On the other hand, Article 1 of Protocol N° 1 (P1-1) to the Convention does not recognise any right to become the owner of property (No. 11628/85, Dec. 9.5.86, D.R. 47, p. 270).

The Commission further recalls that "possessions" within the meaning of Article 1 of Protocol No. 1 (P1-1) can be either "existing possessions" (Eur. Court HR, Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, para. 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 (Eur. Court HR, Pine Valley Developments v. Ireland judgment of 29 November 1991, Series A No. 222, p. 23, para. 51; Pressos Compania Naviera S.A. v. Belgium judgment of 20 November 1995, Series A No. 332, p. 21, para. 31). Moreover, the Commission recalls that the Convention does not guarantee a right to restitution of property (No. 25497/94, Dec. 17.5.95, D.R. 85-A, p. 126).

It is clear that the present case does not concern any "existing possessions" of the applicant. The property of the applicant's father, his predecessor in title, was taken over by the State Treasury in 1951. It was nationalised in 1958. The nationalisation decision was further confirmed by the decision of the Minister of Construction in 1960. The applicant has not been able to exercise any ownership rights over the property.

It remains to be examined whether the applicant could have any "legitimate expectation" of realising his claim to either restitution of the property or to compensation. It is true that he contends that the nationalisation decisions were in breach of the nationalisation laws applicable at the relevant time. The applicant argues in particular that the property concerned was not subject to nationalisation as it did not meet the criteria set out in the nationalisation laws. However, he has not substantiated this claim by any relevant documents. Further, it does not transpire from any documents submitted by the applicant that his right has been acknowledged by any of the authorities concerned. It is true that the Ministry of Industry, upon the applicant's request to set aside the nationalisation decisions, instituted administrative proceedings. However, these proceedings, which were instituted under the generally applicable provisions of the Code of Administrative Procedure pertaining to annulment of any unlawful administrative decision, were intended simply to examine whether those decisions had been lawful. The institution of such proceedings does not amount to a recognition of the applicant's property rights.

The Commission further observes that, in any event, the applicant did not exhaust applicable domestic remedies as he has not shown that he lodged a complaint with the Supreme Administrative Court about the failure of the administration to pronounce a final administrative decision.

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.

The application is therefore incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber