CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

Application no. 56268/00
by Lidia OSTAFI
against Poland

The European Court of Human Rights (Third Section), sitting on 2 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr L. GARLICKI, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 August 1999,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Lidia Ostafi, was a Polish national born in 1926. The respondent Government were represented by their Agent, Mr J. Wołąsiewicz.

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

In 1992 the applicant bought a property in Nowa Bystrzyca. It consisted of a plot of land and a building which housed a hotel and a restaurant. The applicant was advised by the local authorities that a land use plan allowed only developments relating to tourism and leisure. She decided to renovate the property. The renovation, which required significant financial outlays, ended in 1995. The applicant lived in that building.

On 12 July 1995 the Mayor of Bystrzyca Kłodzka (*Burmistrz*) granted a certain Mr W.T. a planning permission to convert buildings situated on a plot of a land adjacent to the applicant's property into a carpenter's shop and a sawmill. The applicant appealed against this decision to the Wałbrzych Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*).

On 24 October 1995 the Board quashed the impugned decision. It pointed out that the land use plan designated the area in which the property was located as "a low density residential area". The Mayor's decision breached the land use plan and was therefore null and void pursuant to Article 16(1) of the Town and Country Planning Law of 1994.

Mr W.T. lodged with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) an appeal against the Board's decision but it was dismissed on 14 May 1996.

In June 1997 the applicant complained to the Wałbrzych Provincial Governor about the Bystrzyca Kłodzka Municipal Office's inactivity in enforcing a decision to close down a carpenter's shop and a sawmill operated by Mr W.T.

On 23 July 1997 the Director of the Bystrzyca Kłodzka District Office (*Kierownik Urzędu Rejonowego*) ordered Mr W.T. and his wife to convert the buildings in which the carpenter's shop and a sawmill were housed into an agricultural facility. The Director pointed out that the buildings had been used as a sheep-fold before Mr W.T. had installed the wood-processing machinery powered by a diesel engine. Mr W.T.'s actions were in flagrant breach of the local law.

On 7 August 1997 the Wałbrzych Provincial Office (*Urząd Wojewódzki*) informed the Ministry of Environment about the decision of 23 July 1997. It appears that the Ministry's inquiry concerning the enforcement proceedings against Mr W.T. resulted from the applicant's complaint.

On 7 October 1997 the Wałbrzych Provincial Governor dismissed an appeal lodged by Mr W.T. against the decision of 23 July 1997.

On 21 May 1999 the Wrocław Regional Inspector of Construction Supervision (*Wojewódzki Inspektor Nadzoru Budowlanego*) instructed the Kłodzk District Inspectorate of Construction Supervision (*Powiatowy Inspektorat Nadzoru Budowlanego*) to enforce the decision of 7 October 1997 "as quickly as possible" and to treat the case as urgent.

On 28 May 1999 the District Inspectorate advised the Regional Inspector that a site visit was fixed for 14 June 1999.

On 11 May 2001 the Ombudsman asked the Regional Inspector of Construction Supervision to investigate the reasons for "a disturbing delay" in the enforcement proceedings.

On 27 October 2003 the Regional Inspector discontinued the proceedings in the applicant's case since the decision of 23 July 1997 had been enforced.

COMPLAINTS

The applicant complained about a breach of Article 8 of the Convention. She submitted that a carpenter's shop and a sawmill illegally operated by her neighbour were located twenty-five metres from her windows. During the day she was disturbed by noise caused by circular-saws, other heavy machinery and loading and unloading of wood on and off lorries. Her rights to private life and to enjoy peace at home were violated.

The applicant further raised a complaint under Article 1 of Protocol No. 1 She submitted that a decision of 12 July 1995, which allowed her neighbour to operate a carpenter's shop and a sawmill, bankrupted her as it made it impossible for her to run a hotel because tourists were disturbed by noise. Her property lost value and she could not sell it.

The applicant also submitted that the facts of her case disclosed a breach of Articles 1, 13, 14, 17, 18 and 34 of the Convention.

THE LAW

On 25 February 2004 the Government informed the Court that the applicant had died on 2 March 2003. They also asked the Court to strike the application out of the list of cases.

The Court notes that the applicant died on 2 March 2003 and that no request has been submitted by the applicant's heirs to pursue the examination of the case. In these circumstances the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special

circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued. Accordingly, the case should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Mark VILLIGER
Deputy Registrar

Georg RESS
President