AS TO THE ADMISSIBILITY OF

Application No. 33230/96
by Jan PELKA and others
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 13 September 1996 by Jan PELKA and others against Poland and registered on 27 September 1996 under file No. 33230/96;

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

The applicants are five Polish citizens. J. Pelka and L. Tarwid were born in 1908 and 1918. They are retired and reside in Warsaw. W. Jankowski was born in 1927. He is retired and resides in Gdynia. B. Kurnatowska was born in 1929 and resides in Warsaw. P. Szczesniewski, born in 1944, is a lawyer and resides in Warsaw.

In 1949 the local authorities, acting in the name of the State Treasury, took over the property of the applicants' predecessor in title, located in Gdynia. Later the property was transferred to the Navy.

In 1950 the property was nationalised by decision of the Presidium of the Regional Council (Prezydium Wojewódzkiej Rady Narodowej).

In 1958 the Navy informed the applicants that their property had been nationalised.

In 1963 the Nationalisation Appeals Board of the Ministry of Internal Affairs (Komisja Odwolawcza do spraw wywlaszczen przy Ministrze Spraw Wewn*trznych) dismissed the applicants' appeal against the 1950 decision.

In 1991 the applicants made a request to the Ministry of Ownership Transformation (Ministerstwo Przeksztalcen Wlasnosciowych) for restitution of the property concerned. In the same year the applicants requested the Navy to restore the property. Subsequently the Navy refused to make restitution, relying on the nationalisation decision of 1950 and the dismissal of the applicants' appeal of 1963.

On 6 June 1991 the applicants requested the Minister of Planning and Construction (Ministerstwo Gospodarki Przestrzennej i Budownictwa) to restore the property.

On 4 May 1992 the Gdynia municipality refused to restore the property.

On 26 November 1993 the Minister of Planning and Construction, in reply to the applicant's letter of 6 June 1993, sent the case-file to the Gdynia City Hall.

On 4 January 1994 one of the applicants (J.P.) submitted a request to the Gdansk Governor (Wojewoda Gdanski) to have the 1992 decision of the Gdynia municipality set aside.

On 31 May 1994 the Governor set aside the decision of the Gdynia municipality of 4 May 1992 and ordered that the case be reconsidered. The Governor considered that the parties had not participated in the proceedings in 1992 and that an administrative hearing should have been held in order to establish the manner in which the property was being used by the Navy.

On 23 March 1994 the applicants lodged a request with the Regional Office (Urz*d Rejonowy) to have the 1950 decision of nationalisation declared null and void as having been in flagrant breach of the nationalisation laws applicable at that time.

On 7 August 1995 the Regional Office informed the parties that administrative proceedings had been commenced to examine the lawfulness of the nationalisation decision of 1963 and that the date of the visit of the property had been fixed.

On 28 August 1995 the Navy guard officer at the property did not allow either the applicants or the representative of the Regional Office to enter the property.

On 23 August 1995 the Gdansk Governor transmitted the applicant's request of 23 March 1994 to have the nationalisation decision declared null and void to the Minister of Planning and Construction.

On 15 September 1995, in reply to an enquiry by the District Office of 6 September 1995, the Navy declared that the property was necessary for the purposes of national defence.

On 22 September 1995 the applicants and a representative of the Regional Office were allowed to enter the property and to see it from the outside.

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 applicants complain under Article 1 of the Protocol N° 1 that their right to enjoyment of possessions has been breached by the failure of the administrative authorities to declare the nationalisation decision of 1950 null and void. The applicants contend that the property concerned should not have been nationalised as it did not meet the relevant criteria set out in the nationalisation laws applicable at the material time.

THE LAW

The applicants complain under Article 1 of Protocol N° 1 (P1-1) that their right to enjoyment of possessions has been breached by the failure of the competent authorities to declare the nationalisation decision of 1950 null and void.

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 such right existed (No. 7655-7657. Dec. 4.10.77, D.R. 12, p. 111). Moreover, Article 1 of Protocol No. 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) may 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).

It is clear that the present case does not concern any "existing possessions" of the applicants. The property of the applicants' predecessors in title was taken over by the State Treasury in 1949. It was further nationalised in 1950. Neither the applicants nor their predecessor in title have been able to exercise any ownership right over the property concerned.

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 they contend that the nationalisation decision was in breach of the nationalisation laws applicable at the relevant time and should therefore be declared null and void. However, this claim has not been substantiated. Further, it does not transpire from the case-file that their claim has been acknowledged by

any of the authorities concerned. It is true that the Gdynia Regional Office, upon the applicants' request to declare the nationalisation decisions null and void in accordance with Article 155 of the Code of Administrative Procedure, instituted administrative proceedings. However, these proceedings were intended only to examine whether those decisions had been lawful. The institution of such proceedings does not amount to a recognition of the applicants' property rights.

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

It follows that the applicants have not shown that they have 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. 4.3.96, D.R. 85-A, p. 65, No. 25497/94, Dec. 17.5.95, D.R. 85-A, p. 126).

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber