AS TO THE ADMISSIBILITY OF

Application No. 30642/96
by Jadwiga PILATKOWSKA
against Poland

The European Commission of Human Rights sitting in private on 20 October 1997, the following members being present:

Mr S. TRECHSEL, President
Mrs G.H. THUNE
Mrs J. LIDDY
MM E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs M. HION
MM R. NICOLINI
A. ARABADJIEV

Mr M. de SALVIA, Secretary to the Commission

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

Having regard to the application introduced on 19 September 1995 by Jadwiga PILATKOWSKA against Poland and registered on 26 March 1996 under file No. 30642/96;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 18 February 1997 and the observations in reply submitted by the applicant on 23 April 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1946, is an economist, residing in Warsaw.

A. Particular circumstances of the case

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

In 1945 the applicant's father was resettled from Tulicze, a locality in the territories which had earlier belonged to Poland, to the territory of Poland within the boundaries traced as a result of the Second World War.

On 16 May 1991 the Warsaw District Office informed the applicant that her claim for compensation for her father's property abandoned in the former eastern territories of Poland had been registered as required by Article 88 of the 1985 Land Administration and Expropriation Act.

In a judgment of 8 September 1991 the Warsaw District Court declared that the applicant had inherited one third of her late father's estate.

In a judgment of 8 September 1994 the Warsaw District Court established the composition of the property abandoned by the applicant's father in Tulicze in 1945.

In an assessment of 25 October 1996 an expert in real estate declared that the value of the applicant's father's property in Tulicze of which the applicant had inherited one third pursuant to the 1994 judgment, was equivalent to 1.208.136 zlotys in current prices.

On 27 November 1996 the applicant, together with a group of persons having a claim to compensation for property abandoned in the former Polish eastern territiories, participated in a tender for purchase from the State Treasury of a plot of land located in Legnica, which had been possessed by the Soviet army before their withdrawal from Poland. As a result of the tender the applicant and the other persons acquired property of buildings located on the plot and a right to use the land for ninety-nine years.

In a decision of 3 February 1997 the Director of Legnica Regional Office (Kierownik Urz*du Rejonowego) stated that, in accordance with the Land Administration and Expropriation Act and its by-laws, a sum of 1.154.771 zlotys, being the value of the property in Tulicze as estimated by the October 1996 expert report, would be counted towards the price to be paid by the applicant and two other persons designated in the judgment of 8 September 1991 for the purchase of 153/1000 of property located in Legnica whose number in the local land register was 571/1.

By a notarial deed drawn up on 25 February 1997 on the basis of the administrative decision of 3 February 1997 the purchase by the applicant and nineteen other persons of the land and buildings located in Legnica and registered in the local land register under No. 571/1 was established. The applicant thereby acquired the co-ownership of the buildings and the right to use the land for ninety-nine years. A sum of 1.154,771 zlotys, being the value of the property abandoned in the former Eastern territories of Poland of which the applicant had inherited one third by virtue of the Warsaw's District Court's judgment of 8 September 1991 was counted towards the price. It covered the price of co-ownership of the buildings and the payment for the right to use the land for fifty-seven years.

B. Relevant domestic law

Article 81 of the Land Administration and Expropriation Act of 29 April 1985 provides that the persons who abandoned property in the former eastern territories of Poland due to the Second World War are entitled to compensation therefor. This compensation is to take the form of either real property (or a lease for ninety-nine years) of the same value purchased from the State Treasury or of deduction of the value of the property owned in the East from the price of the property (or a lease for ninety-nine years) purchased from the State Treasury.

Article 81 para. 5 of the same Act provides that the compensation is conditional on the registration of the claim with the local authority of the State administration not later than 31 December 1992.

Article 5 para. 1 of the Local Administration Act of 10 May 1990 provides that the property of the State possessed by the local State administration is transferred to the relevant local municipality.

COMPLAINTS

The applicant complains that her claim to be compensated for her father's property abandoned in the former Eastern territories of Poland, guaranteed under Polish law, cannot be satisfied.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 19 September 1995 and registered on 26 March 1996.

On 14 October 1996 the Commission decided to communicate the application to the respondent Government.

The Government submitted their observations on 18 February 1997. The applicant replied on 23 April 1997.

THE LAW

The applicant complains that her claim to be compensated for her father's property abandoned in the former Eastern territories of Poland, guaranteed under Polish law, cannot be satisfied.

The Commission considers that the case falls to be examined under Article 1 of Protocol No. 1 (P1-1) to the Convention, which reads:

> "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 preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

However, under Article 25 (Art. 25) of the Convention, the Commission may only deal with petitions from any person claiming to be a victim of a violation of the rights set forth in the Convention. The Commission recalls that the answer to the question whether an applicant can claim to be a victim of a violation of the Convention depends largely on the legal interest which the applicant has in a

determination of his allegations of Convention breaches (No. 9320/81, Dec. 15.3.84, D.R. 36, p. 24). Someone who has obtained redress at the domestic level for the alleged violations of the Convention cannot claim to be a victim of those violations (No. 17926/91, Dec. 28.6.93, D.R. 75, p. 167).

The Commission notes that in the present case the applicant in February 1997 purchased from the State Treasury a co-ownership of the plot located in Legnica registered in the local land register under No. 571/1 and that the entire value of her compensation claim under Article 81 of the Land Administration and Expropriation Act was counted towards the price of purchase. The Commission considers therefore that the applicant's claim to be compensated for the property abandoned in the former Eastern Polish territories has been fully satisfied and that she has thereby obtained redress at the domestic level for the alleged violation of the Convention. Under Article 25 (Art. 25) of the Convention she can consequently no longer claim to be a victim of this violation.

It follows that the application must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA	S. TRECHSEL
Secretary	President
to the Commission	of the Commission