AS TO THE ADMISSIBILITY OF

Application No. 26612/95
by Anna POLETEK
against Poland

The European Commission of Human Rights sitting in private on 27 November 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

Mr. H.C. KRÜGER, 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 13 December 1994 by Anna POLETEK against Poland and registered on 3 March 1995 under file No. 26612/95;

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 Canadian citizen born in 1920, is retired. She resides in Sudberg in Canada. Before the Commission she is represented by Mr. Zbigniew Cichon, a lawyer practising in Kraków.

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

1. Particular circumstances of the case

In 1976 the applicant's brother S.P. had obtained a decision of the Biskupice Mayor declaring that by virtue of the Agricultural Property Regulation Act of 1971 ("the 1971 Act") he had become the owner of a plot of land located in S.

On 1 September 1991 the applicant requested the Kraków Governor (Wojewoda) to institute proceedings in order to annul this decision according to Article 155 et seq. of the Code of Administrative Procedure. She submitted that it was unlawful as the plot had belonged to their parents who had died intestate. Thus, she had been entitled to inherit half of the plot. In order to obtain a decision in his favour her brother had wrongly informed the administrative authorities that she had donated her property right to him, whereas she had never done so. Moreover, the 1971 Act prohibited bestowing on Polish agricultural users land belonging to aliens. As in 1976 she had already had Canadian citizenship, her land could not have lawfully been bestowed on her brother.

On 9 March 1992 the Governor discontinued the proceedings. He considered that since 1 January 1992 the State Treasury Land Property Act of 19 October 1991 ("the 1991 Act") specifically prohibited the institution or continuation of proceedings in order to annul decisions on ownership of agricultural real property which had been issued in accordance with the 1971 Act.

The applicant appealed to the Minister of Agriculture against the decision to discontinue the proceedings. She submitted that it was unlawful as it breached Article 7 of the Constitution, guaranteeing the enjoyment of private property. She contended that the decision was in breach of Article 6 of the Convention as it denied her access to court. She indicated that whereas the 1991 Act expressly excluded access to court in such cases as from 1 January 1992, she had instituted proceedings on 9 September 1991. Had the authorities decided her case more speedily, she would have obtained a decision on the merits. She argued that she should not be penalised for the delay on the part of the authorities in deciding her case.

On 31 August 1993 the Minister of Agriculture upheld the Governor's decision of 9 March 1992. He indicated that, in accordance with Article 63 of the 1991 Act, the general provisions of the Code of Administrative Procedure concerning amendment or annulment of final administrative decisions did not apply to decisions confirming the ownership of agricultural real property issued in accordance with the 1971 Act.

The applicant filed an appeal to the Supreme Administrative Court (Naczelny S*d Administracyjny), complaining that she was deprived of access to court. She relied, inter alia, on Article 6 para. 1 of the Convention.

On 24 November 1994 the Supreme Administrative Court dismissed the applicant's appeal. The Court considered that its only task was to examine whether administrative decisions were lawful. In the present case the Minister, in deciding that the lawfulness of the 1976 decision could not be examined, had properly applied Article 63 of the 1991 Act. The Court also noted that, according to a decision of the Supreme Court, this provision could not be interpreted as opening a possibility to file an action with a civil court against a decision on ownership of property in accordance with the 1971 Act. Thus, no judicial or administrative remedy was available against the decision at issue.

2. Relevant domestic law and practice

Article 155 of the Code of Administrative Procedure of 1960 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, a final administrative decision can be annulled if it has been issued by an authority which had no jurisdiction or without a legal basis or contrary to the applicable law.

Article 63 of the State Treasury Land Property Act of 19 October 1991 provides that the general provisions of the Code of Administrative Procedure concerning amendment or annulment of final administrative decisions do not apply to decisions confirming the ownership of agricultural real property issued in accordance with the Agricultural Property Regulation Act of 1971.

A decision of the Supreme Court of 30 June 1992 states that Article 63 of the State Treasury Land Property Act does not confer a right to claim before a civil court that such decisions are invalid (decision III CZP 73/92).

COMPLAINTS

The applicant complains under Article 6 of the Convention that she was denied access to court. She submits that the State Treasury Land Property Act of 19 October 1991 expressly deprived her of any possibility of having her case examined by a court. She maintains that the original decision of 1976 was evidently unlawful as it had transferred property owned by her as an alien to her brother. She further submits that the 1991 Act came into force when the proceedings were already pending and that she should not be penalised for the delay on the part of the authorities in deciding the case. She submits that in principle the Code of Administrative Procedure allows institution of proceedings in order to annul any final administrative decision. She maintains that there was no reasonable justification for excluding such proceedings with regard to decisions concerning agricultural property.

The applicant further complains under Article 6 para. 1 of the Convention that the proceedings exceeded a reasonable time within the meaning of this provision. She submits that the proceedings concerned only points of law, that no evidence had to be taken during the proceedings and that therefore the decisions should have been taken more speedily.

The applicant also complains under Article 1 of Protocol No. 1 that as a result of denial of access to court she was deprived of her property rights.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention that she was denied access to court. She submits that the State Treasury Land Property Act of 19 October 1991 expressly deprived her of any possibility of having her case examined by the court.

Article 6 (Art. 6) of the Convention states, insofar as relevant:

> "In the determination of his civil rights and obligations (...) everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission observes that in the present case the legislation at issue, i.e. the 1991 State Treasury Land Property Act, came into force on 1 January 1992 as regards non-availability of judicial review in the cases arising out of the application of the Agricultural Property Regulation Act of 1971. It is true that the 1991 Act had procedural aspects in that it expressly excluded access to court in

such cases. However, it also affected the applicant's situation in that it ultimately extinguished any possible claim to property of the land in question that the applicant might have had until 1 January 1992. This was confirmed by the Kraków Governor's decision of 9 March 1992. Accordingly, the applicant ceased to have any arguable civil right at the time when this decision was taken (cf. the findings below concerning the applicant's complaint under Article 1 of Protocol No. 1) (P1-1). Poland recognised the competence of the Commission to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993".

It follows that this part of the application is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention that the proceedings exceeded a reasonable time within the meaning of this provision.

The Commission's competence to examine individual petitions against Poland became effective on 1 May 1993. The Commission therefore concludes that insofar as the applicant complains about the events prior to that date, this part of the application is outside the competence ratione temporis of the Commission, and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

As regards the occurrences after 30 April 1993, the Commission recalls that Article 6 (Art. 6) is not applicable to proceedings concerning the recognition of a "right" which has no legal basis in the State in question (No. 12763/87, Dec. 14.7.88, D.R. 57 p.216). The Commission notes that the applicant ceased to have any arguable civil right at the latest on 9 March 1992. It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains under Article 1 of the Protocol No. 1 (P1-1) that as a result of denial of access to court she was deprived of her property rights.

The Commission recalls the Convention organs' case-law, according to which a person complaining of an interference with his right to property must show that such a right existed (No. 12154/86, Dec. 12.10.88, D.R. 58, p. 62). Moreover, the guarantee of the property rights set out in the second sentence of para. 1 of Protocol No. 1 to the Convention is aimed only at deprivation of property, and not at regulation by private law of the rights of private individuals (No. 13021/87, Dec. 8.9.88, D.R. 57, p. 268). In the present case the applicant's parents died intestate. In 1976 the applicant's brother obtained a decision declaring that he had become owner of a plot of land belonging to the estate of their parents. From 1976 to 1991 the applicant failed to take any steps in order to secure the rights to which she claims she would have been entitled by inheritance, and the State Treasury Land Property Act deprived her of the possibility of taking the matter to the court. The Commission considers that the applicant has not therefore shown that her property right in question existed.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(S. TRECHSEL)