CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

Application no. 33776/96
by Pelagia POTOCKA, Piotr POTOCKI, Dorota POTOCKA-RADZIWIŁŁ,
Anna POTOCKA and Izabela d'ORNANO
against Poland

The European Court of Human Rights (Fourth Section), sitting on 6 April 2000 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mr J. Hedigan,
Mrs S. Botoucharova, *judges*,
and Mr V. Berger, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 18 December 1995 and registered on 13 November 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the Commission's partial decision of 21 October 1998,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The first applicant, born in 1908, is a Spanish citizen and resides in Madrid. The other applicants are her children. The second applicant, born in 1940, has Spanish and Polish nationality and resides in Madrid. The third applicant, born in 1935, is a Spanish citizen, residing in Madrid. The fourth applicant, born in 1931, is a Spanish citizen and resides in Paris. The fifth applicant, born in 1937, has French and Polish nationality and resides in Paris. The applicants are represented before the Court by Ms. Corinne Imbach, a lawyer practising in Strasbourg.

A. The circumstances of the case

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

In 1947 Roman Potocki, acting on behalf of his brother Józef, lodged an application pursuant to Article 7 of the October 1945 Decree on Real Property in Warsaw for ownership for a limited period ("*własność czasowa*") of two plots of land located in Warsaw at Krakowskie Przedmieście to be awarded to Józef Potocki, the former owner. This application remained unanswered.

On 3 December 1990 the Warsaw District Court (*Sąd Rejonowy*) declared that the estate of Józef Potocki had been inherited, pursuant to the relevant provisions of the Polish Civil Code, by his wife Pelagia Potocka (4/16), and by his children Piotr Potocki-Radziwiłł, Anna Potocka, Dorota Potocka-Radziwiłł and Izabela d'Ornano (3/16 each).

On 20 December 1990 the second applicant lodged a request with the Warsaw Governor (*Wojewoda Warszawski*) for restitution of the two plots, indicating that they were listed in the Warsaw Land Register under nos. 415 and 9048.

By a decision of 5 August 1991 the Director of the Warsaw District Office (*Kierownik Urzędu Rejonowego*) discontinued the administrative proceedings related to the applicant's request of 20 December 1990.

On 8 September 1991 the Warsaw Regional Office (*Urząd Wojewódzki*) quashed the decision to discontinue the proceedings. It had been established during the proceedings that the plots concerned were located in Warsaw. By virtue of the Decree on Real Property in Warsaw of 26 October 1945, all real property located in Warsaw had been expropriated. However, under Article 7 of the 1945 Decree, former owners had a right to lodge an application for ownership of their plots for a limited period ("*własność czasowa*"). The authorities competent to deal with these applications could award such a right to former owners if it was established that the plots concerned had not been designated for public use and that the award of ownership for a limited period would therefore not be incompatible with such use. In the applicant's case, such an application had been lodged in 1947, but it had remained unanswered. The first-instance administrative authority, when dealing with the applicants' request of 20 December 1990, had overlooked this. When reconsidering the case, that authority should in particular examine whether the possible award of a right to perpetual use to the applicants, under the provisions of the Land Administration and Expropriation Act of 1985, which had replaced the procedural rights of former real property owners granted to them by Article 7 of the 1945

Decree, would be compatible with the public use of the plots concerned, as determined in relevant local master plans.

On 27 December 1991 the Director of the Warsaw District Office (*Kierownik Urzędu Rejonowego*) refused to return the plots to the applicants and to award them a right to perpetual use. According to him, it had been established during the proceedings that in 1947 the applicants' predecessor in title had submitted an application for ownership for a limited period of the plots which had then been listed in the Warsaw Land Register under entries nos. 415 and 9048. This application had remained unanswered, but the administrative authority had duly examined it in the course of the current proceedings. It was established that the palace located on the plots had been 70 to 75 per cent destroyed during the Second World War, as pointed out in a letter of the Regional Conservator of Historical Monuments (*Wojewódzki Konserwator Zabytków)* of 28 November 1991. The palace had been subsequently rebuilt by the Ministry of Culture. Thus it had been the State Treasury which had borne the costs of the palace's reconstruction. Accordingly, the restitution of the property concerned would have been unjustified, and the administrative authority found no grounds on which the application of 1947 and the request lodged by the applicants in 1990 should be granted.

The applicants lodged an appeal against this decision. They argued that the decision was not in conformity with the applicable laws, in particular as the first-instance authority had failed to establish beyond reasonable doubt that the palace had indeed been destroyed during the Second World War. They also complained that no sound arguments had been advanced in the decision to show that the restitution of property to the applicants would be incompatible with its public use.

On 27 February 1992 the Governor's Office (*Urząd Wojewódzki*) rejected the applicant's appeal, finding that it had been lodged one day after the fourteen-day time-limit provided for in the Code of Administrative Procedure had expired.

The applicants filed an appeal with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). They argued that the appeal had been posted on 20 January 1992, i.e. on the last day of the time-limit, as shown by a posting slip. The fact that the postmark on the envelope showed the date of 21 January 1992, was due exclusively to the incomprehensible negligence of the postal services and could not be held against the applicants.

On 24 July 1992 the Supreme Administrative Court quashed this decision, considering that it was not established that the applicants had lodged their appeal against the decision of 27 December 1991 outside the time-limit provided for by the Code of Administrative Procedure, in particular because the applicants submitted the posting slip to the court, showing clearly that their appeal was posted on 20 January 1992.

On 9 September 1993 the Warsaw Governor’s Office, having examined the applicants' appeal of 20 January 1992, upheld the decision of 27 December 1991. It pointed out that the administrative authority established that the property of the applicants' predecessor in title had been designated by relevant master plans adopted in 1947, 1983 and 1992 for use by the Ministry of Culture and Arts. This designation was not changed by any subsequent decision, as certified by a letter of 19 Augst 1993 from the Director of the Land Administration Department of the Warsaw District Office (*Kierownik Oddziału Geodezji i Gospodarki Gruntami Urzędu Rejonowego*). It was further considered that the palace located on the plots had been destroyed 70 to 75 per cent during the Second World War, as certified by a letter of the Regional

Conservator of Historical Monuments (*Wojewódzki Konserwator Zabytków*) of 28 November 1991. The palace had been rebuilt in the late 1940s by the Ministry of Culture and Arts. As it had been the State Treasury who had borne the costs of the reconstruction, it had acquired ownership of the property concerned. Moreover, at the time when Roman Potocki had lodged the application for award of ownership for a limited period, the buildings on the plot did not exist, as they had been destroyed. The administrative authority concluded that, in the light of the above considerations, the award of a right to perpetual use to the applicants would be unjustified.

On 12 October 1993 the applicants lodged an appeal with the Supreme Administrative Court against this decision, complaining that the impugned decision was not in conformity with applicable substantive law. They first submitted that the decision was in breach of Article 7 of the 1945 Decree in that the administrative authorities had failed to establish with sufficient clarity that the applicant's intentions as to the future use of the palace had not been compatible with the local master plan. The applicants emphasised that the authorities had disregarded their argument that they did not plan to alter the public character of the palace. They had only wanted to reserve a small part of it for their exclusive use, whereas the remainder would be affected to cultural and leisure purposes and would be accessible to the general public. Therefore, no issue arose, in fact, regarding the designation of the property for public use as the latter was to remain unchanged. Moreover, the authorities had failed to indicate why the restitution of property to the applicants would be incompatible with the continued public use.

The applicants further stressed that the authorities had failed to establish beyond reasonable doubt that the buildings on the plots had been destroyed during the Second World War and subsequently rebuilt by the State, and that they should therefore be considered the State's property. The findings in this respect were superficial and based on insufficient evidence. The applicants emphasised in particular that the letter from the Regional Conservator of Historical Monuments of 28 November 1991 could not reasonably be regarded as credible, as the Conservator operated under the supervision of the Ministry of Culture and thus could not be expected to act contrary to that Ministry's interests. In view of this flaw, the authorities should have requested a report of an expert in construction technology in order to verify the information contained in the Conservator’s letter. In conclusion, the applicants requested that the decision under appeal should be set aside and that the case should be reconsidered.

On 22 June 1995 the Supreme Administrative Court rejected the applicants' appeal insofar as it concerned the application for an award of ownership for a limited period, which had been submitted by Roman Potocki in 1947. In doing so, it recalled that, in pursuance of Article 14 of the Supreme Administrative Court Act of 31 January 1980, as amended, it was not competent to deal with appeals against administrative decisions given in cases in which proceedings had been instituted before 1 September 1980.

Insofar as the decision under appeal concerned the applicants' application of 20 December 1990 for award of the right to perpetual use and for restitution of property under the provisions of the Land Administration and Expropriation Act of 1985, the Supreme Adinistrative Court considered that the authorities had failed to establish that restitution of the property to the applicants would be incompatible with the public use of the plot and the palace.But it found that the decision was, in any event, lawful. The court observed that under Article 82 § 2 of the Land Administration and Expropriation Act, former owners had been entitled to claim restitution of real property which had been nationalised and to claim a right to the perpetual use of such property. However, this entitlement had been limited to certain

categories of real property, i.e. one-family houses or small apartment houses. Moreover, the 1985 Act had set forth a time-limit for the submission of such claims, and that limit had expired on 31 December 1988. The applicants' application of 20 December 1990 had been lodged out of time. Hence, the restitution could not have been ordered. Therefore the court dismissed the remainder of the applicants' appeal.

B. Relevant domestic law

1. Expropriation of owners of lands located in Warsaw and the current status of these lands

The Decree on Real Property in Warsaw of 26 October 1945 expropriated owners of real property located in Warsaw and transferred ownership of land to the municipality of Warsaw.

In pursuance with Article 33 § 2 of the Act on Local State Administration of 20 March 1950, the ownership of lands located in Warsaw was assigned to the State Treasury.

The Law of 10 May 1990 on Local Self-Government re-established such self-government. According to Section 5 § 1, the ownership of land which had previously been held by the State Treasury and which was within the administrative territory of municipalities, was transferred to the latter.

2. Entitlement to compensation under the Decree on Real Property in Warsaw

Under Article 7 of the 1945 Decree, former owners had the right to lodge an application for ownership of their plots for a limited period ("*własność czasowa*"). The authorities competent to deal with these applications could award such a right to former owners. They had to examine first whether the plots concerned had not been designated for public use. If they considered that the award of ownership for a limited period to former owners would not be incompatible with public use, a decision could be made in favour of the former owner.

In 1985 the Act on Land Administration and Expropriation was enacted. Under Article 82 § 2 of that Act, former owners of real property were entitled to ask for restitution of property which had been nationalised and to claim a right to the perpetual use of these properties be awarded to them. However, this entitlement was limited to certain categories of real property, i.e. one-family houses or small apartment houses. Moreover, this Act set forth a time-limit for such claims. That limit expired on 31 December 1988.

3. Right to perpetual use of land

The right to the perpetual use of land owned by municipalities is regulated in Book Two of the Civil Code: Property and Other Rights In Rem, Title Two: Right to Perpetual Use. Pursuant to the relevant provisions, this right consists in an entitlement to exclusive use, by a natural or legal person, of land owned by a municipality or by the State for ninety-nine years against annual payment of certain rates. A person having such a title can construct buildings on the land, of which he will be the owner. An administrative decision of a municipality to confer the right to perpetual use on a given individual is necessary and sufficient for a final contract to

this effect to be concluded between the parties. The contract between the municipality and the perpetual user must be in the form of a notarial deed. A right to perpetual use can be sold or bequeathed.

4. Administrative proceedings by which a final administrative decision can be declared null and void

Under Polish law no special provisions have been enacted allowing specifically for redressing the wrongs connected with expropriations effected within the framework of the agrarian reform. Therefore there is no specific legal framework to mitigate the effects of certain infringements resulting from deprivations of property. However, persons whose property was expropriated, or their legal successors, may institute administrative proceedings under Article 155 of the Code of Administrative Procedure, in order to claim that the expropriation decisions should be declared null and void as having been in breach of the laws setting out criteria for nationalisation, as applicable at the time of the nationalisation. If it is established that the contested decision was contrary to the legislation applicable at the time of the nationalisation, the administrative authority shall declare it null and void. Administrative decisions may ultimately be appealed against in the Supreme Administrative Court.

5. The scope of judicial review by the Supreme Administrative Court

Article 196 § 1 of the Code of Administrative Procedure provides that an appeal against an administrative decision can be lodged with the Supreme Administrative Court for violation of the law. Article 207 § 2 states that the Court shall set the decision aside wholly or in part if it establishes that the decision was in breach of substantive law or that the proceedings leading to the decision had a flaw which made the decision null and void or that procedural shortcomings justify reopening the proceedings.

COMPLAINTS

The applicants complain under Article 1 of Protocol No. 1 to the Convention that they were deprived of their property rights in that the final judgment of the Supreme Administrative Court upheld the administrative refusal to return the plots and the palace, and to award a right to perpetual use thereof.

They submit that the authorities relied on the argument that the palace had been 70 to 75 per cent destroyed during the Second World War and that it should, therefore, be considered the property of the State, as it had been the Ministry of Culture and Arts which had borne the costs of its reconstruction. The authorities had failed, however, to adduce sufficient evidence to show that the palace had actually been destroyed, except for one letter from a government agency which could not reasonably be considered credible as that agency was subordinated to the Ministry of Culture and Arts.

The applicants stress that when in 1947 Roman Potocki submitted an application for the award of ownership for a limited period on behalf of their late husband and father, no local master plan existed which designated their palace for public use. All the master plans referred to by the authorities in their decisions were adopted after this application was submitted. Accordingly, their existence should have had no bearing on the decision concerning the claim for restitution.

They also contend that the authorities disregarded their assertion that they did not intend to alter the public function of the palace. They had only wanted to reserve a small part for their exclusive use, whereas the remainder would be affected to cultural and leisure purposes and, as such, be accessible to the general public.

The applicants further invoke Article 8 of the Convention.

The applicants finally complain under Article 6 § 1 of the Convention that they did not have access to a court as the Supreme Administrative Court which was competent to deal with their case lacked full jurisdiction, extending to questions of law as well as of fact, given that its examination was limited under Polish law to the lawfulness of the decision under appeal.

THE LAW

1. The applicants complain under Article 1 of Protocol No. 1 to the Convention that they were deprived of their property rights in that the final judgment of the Supreme Administrative Court upheld the administrative refusal to restitute the plots and the palace, and the refusal of a right to their perpetual use. They submit that when rejecting the applicants' request for restoration of their property, the authorities failed to take many relevant elements into consideration.

Article 1 of Protocol No. 1 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 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."

The Court first observes that Poland ratified Protocol No. 1 on 10 October 1994. Insofar as the applicants could be understood to be complaining about official decisions regarding property rights given prior to that date, the Court recalls that, in accordance with universally recognised principles of international law, a State can only be held responsible in respect of events following the ratification of the Convention. It follows that the Court is competent *ratione temporis* only in respect of events which occurred after that date.

The Court further recalls that, according to the case-law of the organs of the Convention, a person complaining of an interference with his property must show that such a right existed (Eur. Comm. HR, no. 7655-7657. Dec. 4.10.1977, D.R. 12, p. 111). Moreover, it is plain from the text of Article 1 of Protocol No. 1 that the latter aims at securing the peaceful enjoyment of existing possessions but it does not recognise any right to become the owner of property (Eur. Comm. HR, no. 11628/85, Dec. 9.5.1986, D.R. 47, p. 270).

The Court further recalls that "possessions" within the meaning of Article 1 of Protocol No. 1 may be either "existing possessions" (see the Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, § 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 (see the Pine Valley Developments and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 23, § 51; and the Pressos Compania Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, § 31).

The Court considers it obvious that the present case does not concern "existing possessions" of the applicants. The property of the applicant's legal predecessors was expropriated by operation of law under the 1945 Decree. Consequently, the property rights of the applicants' predecessors ultimately became extinct.

It remains to be examined whether the applicants could have any "legitimate expectation" of realising their claim to restitution of property. On the face of the case, the Court cannot find any indication that the applicants have any arguable claim for restitution of their property . It is true that there was a generally available possibility of seeking restitution of the property of their predecessors under the Code of Administrative Procedure. However, this remedy was of a procedural character only and had no relevance for assessing the prospects of success of their claim.

Moreover, the applicants do not claim that since 1945 they ever exercised any effective ownership rights over the property concerned. The Court recalls in this respect that the hope of recognition of a former property right which has not been susceptible of effective exercise for a long period of time is not to be considered a "possession" (see nos. 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92, Dec. 4.3.96, D.R. 85, p. 5, and the case-law referred to on p. 18).

The applicants contend that in the administrative proceedings the authorities wrongly assessed evidence before them and, as a result, gave erroneous decisions. However, the Court notes that their arguments were carefully examined by the administrative authorities to whom the applicants had submitted their claim to have their property restored to them. It considers that the applicants have failed to demonstrate that the reasoning of the authorities was arbitrary or that any elements which might lead to a different conclusion were disregarded by them.

It follows that the applicants have not shown that they had any relevant "existing possessions" or any "legitimate expectations" of having their property restored to them. Moreover, the Convention does not guarantee a right to restitution of property (cf., *mutatis mutandis*, nos. 23131/93, Dec. 4.3.1996, D.R. 85-A, p. 65, and no. 25497/94, Dec. 17.5.1995, D.R. 85-A, p. 126). There is nothing to suggest that the applicants' right to peaceful enjoyment of their possessions has in any way been infringed by the dismissal of their claims for restitution.

This part of the application is therefore incompatible *ratione materiae* with the provisions of the Convention and must be rejected under Article 35 § 4 of the Convention.

2. The applicants further invoke Article 8 of the Convention.

Article 8, insofar as relevant, reads:

"1. Everyone has the right to respect for …his home …

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court observes that the applicant has not shown that the property in question could be considered their "home" within the meaning of this provision. They have not shown that they lived therein after the date on which the Convention institution became competent to examine individual petitions against Poland. The Court therefore considers that the refusals to return this property to the applicants cannot be considered to amount to an interference with the applicants' right to respect for home.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of this provision.

3. The applicants finally complain under Article 6 § 1 of the Convention that they did not have access to a court as the Supreme Administrative Court which was competent to deal with their case lacked full jurisdiction over questions of fact and law, given that its review under Polish law was limited to examination of the lawfulness of the decision under appeal.

Article 6 § 1, insofar as relevant, reads:

"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.

a) As regards the exhaustion of domestic remedies, the Government first submit that the applicants did not satisfy the requirement of exhaustion of domestic remedies set out by Article 35 of the Convention.

They argue that under the 1945 Decree the former owners of properties located in Warsaw could request an award of ownership for a limited period. Subsequently, pursuant to Article 82 § 2 of the Land Administration and Expropriation Act, which entered into force on 1 August 1985, they could be awarded a right of perpetual use if they had not been granted ownership for a limited period and if certain conditions provided for by that Act were met.

The 1985 Act created for the former owners a new legal framework for claiming restitution of properties expropriated under the 1945 Decree. Consequently, the proceedings which could be instituted in order to claim compensation on the terms provided for by this Act should not be regarded as a continuation of proceedings instituted under 1945 Decree.

The Government conclude that the applicants did not exhaust all domestic remedies as they did not continue the proceedings initiated by the request lodged by Roman Potocki in 1945.

The applicants submit that there existed two separate, albeit not contradictory, applications regarding the property in question: that submitted in 1947 by Roman Potocki and that lodged with the administrative authorities by Piotr Potocki in 1990. The purpose of the 1990 application was, firstly, to have the application lodged in 1947 examined, and, secondly, to institute fresh administrative proceedings.

The applicants draw the Court's attention to the fact that the first-instance administrative decision given on 27 December 1991 referred to both applications. The administrative authority stated that it had examined the application of Roman Potocki submitted in 1947. In its conclusion, it stated: "Having examined the evidence in the present case [the authority][did] not find any grounds on which to allow the applications of Mr Roman Potocki and Mr Piotr Potocki."

The applicants further stress that it was stated in the second-instance administrative decision of 9 September1993 that the authorities had also examined an application for award of ownership for a limited period. This wording could only be a reference to the 1947 application, given that "ownership for a limited period" no longer existed at the time when the 1990 application was submitted.

In conclusion, the applicants disagree with the Government's submission that the application submitted by Roman Potocki in 1947 has not been examined by the authorities. They contend that this argument runs counter to the literal meaning of the decisions given in the case. Given that both decisions refer to both applications and indicate a separate legal basis for the solutions adopted in respect of them, there is no room for doubt that both applications were decided on the merits. Had the applicants submitted now a new application requesting that the 1947 request be reconsidered, it would certainly have been rejected as *res iudicata* under Article 105 of the Code of Administrative Procedure.

The Court acknowledges that the administrative authorities regarded the applicants' application of 1990 as being aimed at continuation of the proceedings instituted in 1947 and also as a separate application to have the property returned to them. The Court further observes that the Supreme Administrative Court stated in its judgment of 22 June 1995 that the proceedings in question concerned both the applicants' claim for the property to be returned and for a right of perpetual use. The court rejected the latter request, finding that under Article 14 of the 1980 Supreme Administrative Court Act it could not examine the contested administrative decisions in their part relating to this claim for perpetual use to be awarded, given that the proceedings concerning this claim had been instituted in 1947. The Court also notes that the Supreme Administrative Court examined on the merits the application for restitution of property.

Having regard to the fact that, firstly, the administrative authorities refused to grant the request for the award of a right *in rem* submitted in 1947, and, secondly, that the Supreme Administrative Court found that it lacked jurisdiction to examine an appeal against this refusal, the Court considers that the applicants' argument that they cannot now continue the proceedings regarding this part as their subject-matter would be considered *res iudicata*, is well-founded.

It follows that this part of the application cannot be rejected for non-exhaustion of domestic remedies.

b) The Court must now examine whether Article 6 of the Convention was applicable to the proceedings concerned.

The Government submit that the proceedings did relate to the applicants' civil rights and obligations. This term has an autonomous meaning under the Convention and it is necessary to examine what is the nature of the rights concerned under the laws of the respondent State, and what is their content and character. The Government stress that it is unequivocally accepted that an administrative decision may have repercussions in the sphere governed by civil law and may also create effects in that sphere. They cite as an example of such an administrative ruling the decisions on expropriation of real property, which generally generate changes in the civil-law sphere as regards ownership. Consequently, the proceedings in which claims for the return of previously expropriated property have been made should also be regarded as civil proceedings, to which Article 6 of the Convention is applicable. The same applies, in the Government's submission, to the proceeding in which the applicants requested an award of ownership for a limited period.

The applicants agree that the proceedings in question concerned the determination of their civil rights and obligations.

As regards the part of the proceedings in which the applicants asked for the return of the property of their legal predecessors, the Court recalls its above conclusion under Article 1 of Protocol No. 1 that the applicants did not have either an existing possession or a legitimate expectation of obtaining effective enjoyment of a property right. Therefore the Court considers that the proceedings in that part do not concern their civil rights and obligations within the meaning of Article 6 of the Convention. Consequently, that provision cannot be held applicable to this part of the proceedings and, consequently, no right of access to a court for the applicants can be derived from this provision.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 4 of the Convention.

As regards the part of the proceedings relating to the applicants' claim for the award of a right to perpetual use, the Court first refers to its above findings that the administrative authorities examined this claim on the merits and dismissed it by their decisions of 5 August 1991 and 9 September 1993. The Court further has regard to the nature of the right concerned. It notes that the relevant provisions of domestic law are contained in the Civil Code, that the right in question it is regarded therein as a right *in rem* and that it can be sold or bequeathed. Accordingly, the Court considers that this right falls within the ambit of "civil rights" within the meaning of Article 6 § 1 of the Convention and that the latter was applicable to the part the proceedings relating to this claim.

As to the substance of the complaint about the alleged lack of access to a court, the Government contend that the Supreme Administrative Court satisfies all requirements of a "tribunal" within the meaning of Article 6 of the Convention. They argue that in the case under consideration, the scope of judicial review, which was confined to ensuring that the administrative authority had not acted illegally, unreasonably and unfairly, was sufficient for

the purposes of Article 6. The Supreme Administrative Court was competent to examine whether there was a breach of substantive law in the proceedings in which the contested decisions were given and therefore was obliged to review the merits as well.

The Government submit that regard must be had to the nature of the applicants' claims. They refer to the factual circumstances of Zumtobel v. Austria and emphasise that the applicants' claim is similar to that case, in which the Court examined the applicability of Article 6 to administrative decision-making. The Government maintain that in certain areas there are policy considerations that suggest that the final decision on the merits should rest with the executive rather than a court, despite the impact the decision may have upon an individual's civil rights and obligations.

What is more, in the Zumtobel judgment the Court accepted the line of reasoning of the administrative authorities and decided that their decisions were lawful. This, in the Government's argument, permits the conclusion that certain limitations of the requirement of full jurisdiction are acceptable in cases where policy considerations apply.

The Government further refer to the *Kaplan v. the United Kingdom* case (Eur. Comm. HR, no. 7598/76, Report of 17.07.1980, D.R. 21, p. 5) in which the European Commission of Human Rights held that an interpretation of Article 6 § 1 to the effect that it provided for a right to a full appeal on the merits of every administrative decision affecting private rights would lead to a result which was inconsistent with the existing, and long-standing, legal position in most of the Contracting States.

The Government further rely on the Convention organs' case-law according to which no infringement of Article 6 was found in a case in which the only judicial remedy available to the applicants in respect of the alleged interference with their property rights was an application to the English High Court, which did not encompass a full right of appeal on law and facts. The High Court could rule only on points of law. It was further stated that it was not the role of Article 6 to give access to a level of jurisdiction which could substitute its opinion for that of the administrative authorities on questions of expediency if the court did not refuse to examine any points raised by the applicant. Having regard to the fact that the High Court had been able to consider on the merits all submissions that the applicant had made earlier to the administrative authorities and could, if necessary, take evidence, the Commission found that it did not matter in this case that court's jurisdiction was limited to the question of lawfulness on all questions of law and fact (Eur. Comm. HR, no. 20490/92, Dec. 9.03.1994, D.R. 76, p. 90).

As regards the temporal limitation of the jurisdiction of the Supreme Administrative Court, the Government observe that under Article 14 of the Supreme Adminstrative Court Act of 31 January 1980, the provisions of the Code of Administrative Procedure are applicable in cases where administrative proceedings were commenced after 1 September 1980. Consequently, no appeal to the Supreme Administrative Court lay either against decisions given before 1 September 1980 or against administrative decisions given after that date as a result of proceedings which had commenced before 1 September 1980. As a result, the appeal by the former owners against a decision had to be rejected.

The Government submit that the r*atio legis* of Article 14 of the Act was obviously to prevent the submission of cases concerning acts and events that had occurred before the Supreme Administrative Court was created. In the opinion of the Government such a limitation could not be regarded as incompatible with the rule of law and was being applied

very often in democratic States as well as before the organs of international systems for the protection of human rights.

The applicants refer to the statement contained in the judgment of the Supreme Administrative Court to the effect that the authorities had failed to establish whether the restitution of property to the applicants would be incompatible with the public use of the land and the palace. They further refer in this respect to the statement that the authorities, contrary to their obligation under Article 107 § 3 of the Code of Administrative Procedure, failed to analyse the facts of the case in the light of the applicable laws, having asserted in general that the applicants' claim was unfounded. This statement, in the applicants' analysis, sheds light on the core issue of the case, namely that the competent authorities interpreted the applicable laws quite arbitrarily and to the detriment of the applicants.

The applicants further submit that the Supreme Administrative Court could not carry out a full examination of their complaints. They draw the Court's attention to the fact that the Government admit that in certain areas of public policy limitations on the judicial review of administrative decisions are legitimate. They further assert that the Supreme Administrative Court accepted erroneous administrative decisions and that it did so for purely formal reasons. They stress that the application of Roman Potocki submitted in 1947 was not examined as the court lacked temporal jurisdiction to examine it. As a result, wrong decisions of the administrative authority remain in force.

In the light of the parties' submissions, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. Therefore, this complaint cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicants' complaint that they did not have access to a court as regards their application for award of the right to perpetual use;

DECLARES INADMISSIBLE the remainder of the application.

Commented [Note1]: Summarise the complaints without necessarily citing the invoked Convention Articles.

Vincent Berger
Registrar

Matti Pellonpää
President