AS TO THE ADMISSIBILITY OF

Application No. 28559/95
by Romuald RADWILLOWICZ
against Poland

The European Commission of Human Rights sitting in private on 14 October 1996, 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
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

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 23 April 1995 by Romuald RADWILLOWICZ against Poland and registered on 18 September 1995 under file No. 28559/95;

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

The applicant, a Polish citizen born in 1940, is a retired railway clerk, residing in Kolobrzeg.

Particular circumstances of the case

In 1943 the applicant's parents were expelled from their house in Porsa, a locality which before 1939 had belonged to Poland, and deported to the Soviet Union. After the Second World War the applicant's father apparently settled in Great Britain. He abandoned in the former eastern territories of Poland his property in Porsa.

In 1964 the applicant's father bequeathed all his estate to his wife. Should she not survive him, the estate would be inherited by the applicant. In 1967 the applicant's father died.

On 24 January 1991 the Kolobrzeg District Office informed the applicant that his claim for compensation for the property abandoned in the former eastern territories of Poland had been registered under No. 82243/60/90. At the same time the Office required him to submit missing documents to substantiate his claim, i.e. a repatriation certificate in the name of the applicant's mother, a description of the property concerned or a court judgment establishing the composition of this property and a court decision to the effect that the applicant had inherited her mother's estate. The applicant did not submit these documents.

In a judgment of 29 May 1991 the Kolobrzeg District Court (S*d Rejonowy w Kolobrzegu) declared that the applicant's mother had inherited the estate of her late husband, the applicant's father.

On 16 November 1993 the applicant's mother donated to the applicant the rights to compensation for the property abandoned in the former eastern territories of Poland, which constituted a part of her inheritance from the applicant's father.

In 1994 the applicant and his mother filed an action with the Koszalin Regional Court (S*d Wojewódzki w Koszalinie), requesting that the Court establish that the donation of the entitlement to compensation for the property concerned to the applicant by his mother had been effected in accordance with the law.

In a judgment of 27 April 1994 the Koszalin Regional Court established that the real estate concerned constituted a joint marital property of the applicant's mother and father and that this property had been abandoned as a result of their deportation to the Soviet Union in 1943. The applicant's action was rejected.

As the applicant did not lodge an appeal against this judgment, the Court was not obliged to prepare grounds for it.

Subsequently the applicant complained to various administrative and legislative authorities, claiming that his entitlement to compensation be realised.

B. Relevant domestic law

Article 81 of the Land Administration and Expropriation Act of 29 April 1985 provides that the persons who had abandoned property in the former eastern territories of Poland due to the Second World War or their heirs 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.

On 22 June 1989 the Supreme Court (S*d Najwyzszy) issued a resolution in interpretation of Article 81 of the 1985 Act to the effect that the circle of persons authorised to receive the compensation included the owner of the abandoned property, all his heirs or one of them designated by the others. A transfer of the entitlement to other persons was not possible.

COMPLAINTS

The applicant complains that his claim for compensation for his father's property abandoned in the former territories of Poland cannot be satisfied. Articles 7, 17 and 26 of the Convention are invoked.

THE LAW

The applicant complains that his claim for compensation for his father's property abandoned in the former territories of Poland cannot be satisfied. The Commission has examined this complaint under Article 1 of Protocol No. 1 (P1-1) Convention.

Article 1 of Protocol No. 1 (P1-1) to the Convention 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 Commission first observes that in a judgment of 27 April 1994 the Koszalin Regional Court rejected the action of the applicant and his mother, who claimed that the Court establish that the donation of the entitlement to compensation for the property concerned to the applicant had been effected in accordance with the law. The applicant did not request that written grounds of this judgment be prepared and did not lodge an appeal with the second instance court. He did not, therefore, comply wit the requirements as to exhaustion of domestic remedies available to him under Polish law as set out in Article 26 (Art. 26) of the Convention. However, even assuming that the applicant could be absolved from the obligation of exhausting domestic remedies and that his complaint cold be considered notwithstanding the fact that the above judgment was pronounced before 10 October 1994, i.e. before the date on whcihc Poland ratified Protocol No. 1 to the Convention, the application would have to be declared inadmissible for the following reasons:

The Commission recalls that, according to the Convention organs' case-law, "possessions" within the meaning of Article 1 of Protocol No. 1 (P1-1) extend to a "legitimate expectation" to be able to have an effective enjoyment of a property right (Eur. Court H.R., 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). The Commission further recalls that a person complaining of an interference with his property must show that such right existed (No. 7694/76, Dec. 14.10.77, D.R. 12 p. 131, No. 23131/93, Dec. 4.3.96, unpublished, No. 25497/94, Dec. 17.5.96, unpublished).

However, in the present case the Commission considers that in the period after 10 October 1994 the applicant cannot be regarded as having had a "legitimate expectation" under Polish law. According to Article 81 of the Land Administration and Expropriation Act, the persons who enjoy the entitlement to compensation are either owners or their heirs or one of the heirs designated by others. The applicant is neither an owner of the property concerned nor an heir of the owner, his deceased father. It is true that the applicant's mother purported to donate her rights to compensation to the applicant. However, the decision of the Supreme Court of 22 June 1989 clearly stated that the law does not permit a transfer of the entitlement provided for in Article 81 of the 1985 Act to other persons. Moreover, the judgment of the Koszalin Regional Court of 27 April 1994 did not uphold the applicant's claim that the donation by his mother of the entitlement at issue be declared valid. Therefore tha applicant has not shown that under Polish law he possesses a property right, as the donation could not have resulted in an effective transfer of the entitlement to him. Accordingly the applicant cannot invoke Article 1 of Protocol No. 1 (P1-1) to the Convention.

It follows that this part of the application must be declared inadmissible as being incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

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