CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45223/99
by Beata RUDZIŃSKA
against Poland

The European Court of Human Rights (Fourth Section) sitting on 7 September 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr I. Cabral Barreto,
Mr. V. Butkevych, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 January 1998 by Beata Rudzińska against Poland and registered on 6 January 1999 under file no. 45223/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Polish citizen born in 1975. She is a student residing in Toruń.

A. Particular circumstances of the case

In 1984 the applicant's father opened on her behalf a special housing savings account in the State Savings Bank in Toruń, with the purpose of financing a future purchase of a house or apartment for the applicant after her coming of age. Until November 1987 he effected monthly payments to the account.

On 12 May 1997, on the applicant's request, the Toruń branch of the State Savings Bank informed her that her savings accumulated on the account amounted to a sum of 5,693 of new Polish zlotys (PLZ), including a housing award, in case she was entitled to it.

In a letter to the Director of the Toruń branch of the Bank of 8 July 1997, the applicant submitted that the then real value of a house in Toruń was equivalent to 108,500 PLZ. Thus, there must have been an error in the calculation of her savings, as the terms of the housing savings account guaranteed her that at the closing of the account the monies deposited on it would be reassessed so as to maintain their purchasing power to the level of price of seventy square metres of an individual house. She pointed out that the sum she had on her account was not in reasonable proportion to the current price of housing. She therefore requested that the error be rectified.

In his reply of 17 July 1997, the Director informed the applicant that the calculation of her savings, and in particular of sums due to her as housing award, had been correct. Under the applicable regulations contained in the Ordinance of the Council of Ministers of 7 May 1996, concerning the manner of calculation and payment of housing award and on clearing of accounts between the National Bank of Poland and the State Savings Bank, the following factors were taken into account in the calculation of the award: the length of the period of saving, the sums deposited by the client, the sums paid each year, the average price of housing and the interest rate applicable throughout the relevant period. It was further stressed that the owner of the account was entitled to the housing award calculated on the basis of sums paid in years during which the average price of one square metre of housing had been rising more quickly than the interest rate to be paid on the sums deposited on the housing savings account. In conclusion, the calculation of the sums accumulated on the applicant's savings account which had been effected according to the formula set forth in the Ordinance, was correct.

In a letter to the Minister of Finance of 18 September 1997, the applicant submitted that the sums as calculated by the bank would cover the price of only four square metres of housing at current market prices. Therefore, contrary to the terms of the housing savings account, guaranteed by the State, she would not be able to purchase a house. She complained that this amounted to fraud, which should not be countenanced by the State. She requested that her savings be reassessed.

In a letter of 7 October 1997 the Department of Finances of the National Economy of the Ministry of Finance informed the applicant that the savings accumulated on the housing savings accounts were subject to two forms of reassessment with the purpose of offsetting the

effects of inflation. The first one was the privileged interest rate which, since 1983, was equal to that applicable in respect of long-term savings accounts. Secondly, the owners of the accounts could be awarded housing awards paid directly from the State budget. These awards were designed to compensate the reduction of value of sums accumulated on the housing savings accounts caused by inflation and by augmentation of prices of housing resulting therefrom. However, the sums of awards due to individual clients were to be calculated on the basis of the savings accumulated by the client. It was further stressed that, in practice, most often the owners of such accounts accumulated sums equivalent to ten to twenty per cent of the necessary minimum contribution to be paid to housing co-operatives in order to become a full member ("*wkład*"). The expectation that the housing award would cover in full the difference between this sum and the actual full costs of building of a house was not justified. The applicant was further informed that it was only the bank at which the account had been opened which was competent to reassess the sums of savings deposited on the account.

On 3 November 1997 the applicant complained to the Ombudsman about her situation.

In reply of 21 November 1997 the Ombudsman informed the applicant that he had repeatedly drawn the attention of various State authorities, including the Prime Minister, the Minister of Finances, the Minister of Construction and Planning, to the issues raised by her. These problems arose out of the fact that the persons who had been saving, frequently for years, on the housing savings accounts, were often not in a position to pay the entire price of housing. This was, in part, due to the fact that the issues relating to housing awards, the interest rate applicable to housing savings accounts and the reassessment of the sums deposited on these accounts so as to offset in full the results of inflation had not been comprehensively resolved by the legislator in a manner which would be entirely compatible with the initial obligations of the State. Regrettably, the Ombudsman did not have at his disposal any effective means which would enable him to oblige the legislative and executive authorities to take any steps to solve the problems of persons in the applicant's situation, who had expected that they would be able to finance their housing under the scheme put in place by the 1983 legislation. Consequently, he could take no further action in the applicant's case.

B. Relevant domestic law

Pursuant to the terms of the housing savings account, as set out in the Ordinance of the President of the National Bank of Poland of 24 February 1983, the State guaranteed that the monies accumulated on the housing savings account in the State Savings Bank were to be reassessed so as to maintain their purchasing power. This guaranty covered only sums up to the costs of construction of either 70 square metres at an individual family house or 55 metres of an apartment built by a housing co-operative. This guarantee was to be paid in the form of a housing award. The owner of the account was entitled to obtain the housing award if, in the year in which he or she wished to close his or her account and allocate the monies accumulated on it to finance the purchase of a house or apartment, the average price of one square metre of housing was higher than it had been in the preceding years, and this increase had been higher than the increase of the interest rate applicable to the monies deposited on the housing savings account.

Under the Council of Ministers' Order of 22 June 1993 the persons who have accumulated savings on the housing savings accounts in the State Savings Bank opened before 23 October 1990, which had remained opened for not less than five years, were entitled to housing award if they had bought or built a house or apartment, or adapted non-housing space to housing purposes and had paid for it from their own resources. It was the State Treasury which financed those payments and technically they were to be carried out by the State Savings Bank.

In its resolution of 29 July 1993 the Supreme Court decided that under the provisions of the Civil Code as amended in 1990, the housing savings were not subject to reassessment by the State Treasury which would offset the results of inflation in full. In taking this decision the Court had regard to the provisions of the Civil Code pertaining to a possibility of reassessment of pecuniary obligations in view of inflation. These provisions expressly excluded such a possibility in respect of sums deposited on bank accounts.

As regards the housing savings awards, the Supreme Court further decided that those awards were not subject to reassessment either. The Court observed, *inter alia*, that the problem concerned approximately five million citizens who had accumulated housing savings. A reassessment of the housing awards for all the persons concerned by the State Treasury would not be economically feasible as it would put an undue burden on the State budget. The Court further observed that, in any event, the Council of Ministers' Order of 22 June 1993 provided for a partial reassessment of such awards in the circumstances and on the conditions set forth therein.

COMPLAINTS

The applicant complains under Article 1 of Protocol No. 1 to the Convention that the State failed in its obligations as regards financial assistance relating to housing which it had undertaken towards her in respect of the terms of the housing savings account. She submits that her savings are not subject to reassessment such as to offset in full the effects of inflation and that, as a result, the sum of her savings is now ridiculously small, despite the fact that she has been regularly saving for years in compliance with the terms of her housing savings account, and having had a legitimate expectation that the State would comply with the guarantee laid down in the 1983 Ordinance.

THE LAW

The applicant complains under Article 1 of Protocol No. 1 to the Convention that the State failed in its obligations as regards financial assistance relating to housing which it had undertaken towards her in respect of the terms of the housing savings account.

Article 1 of Protocol No. 1 provides:

> "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 observes that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. It is true that the legislation referred to by the applicant was in part enacted before that date. In particular, the resolution of the Supreme Court, which was of paramount importance for persons in a situation identical with that of the applicant, was taken on 29 July 1993. However, the Court considers that this legislation and the relevant case-law created a continuing situation in that it established certain entitlements for persons who had accumulated savings on the housing savings accounts in the State Savings Bank and this legal situation remains in force. Therefore the present application cannot be declared inadmissible as being incompatible *ratione temporis* with the Convention.

Under Article 35 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted.

The Court recalls in this respect the Convention organs' case-law according to which an applicant is excused from pursuing a domestic remedy if he shows that on the basis of well-established case-law it would be of no avail (Eur. Comm. HR, no. 11945/84, Dec. 12.3.1987, D. R. 51, p. 186; no. 10027/82, Dec. 5.12.1984, D. R. 40, p. 100).

In the present case the applicant has at her disposal a civil action against the State Savings Bank in which she could have claimed payments of the reassessed sum of her savings and of the housing award. However, the Court considers that in the light of the relevant legislation and of the Supreme Court's resolution of 29 July 1993, her action would clearly have been bound to fail. In these circumstances, the applicant should be exempted from an obligation to exhaust this remedy.

The application cannot, therefore, be declared inadmissible for failure to exhaust domestic remedies within the meaning of Article 35 of the Convention.

As to the substance of the complaint, the Court first recalls that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, the Immobiliare Saffi V. Italy judgment of 28 July 1999, § 44, to be published in the Court's official reports). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see the Iatridis v. Greece judgment of 25 March 1999, § 55, to be published in the Court's official reports).

In the present case, the Court observes that the legislation of 1983 was enacted with the purpose of creating a State-supported scheme aimed at co-financing housing to improve the situation of the chronic housing shortage, obtaining at that time. This legislation provided for specific measures in order to safeguard certain pecuniary rights of persons possessing housing savings accounts at the State Savings Bank. In particular, the State guaranteed that the monies deposited on the housing savings account were to be reassessed so as to maintain their purchasing power and to offset the effects of inflation. It is true that later, pursuant to the Council Of Ministers' Order of 22 June 1993, additional conditions were laid down in order for the owners of the housing savings accounts to acquire an entitlement to the housing award, which is now to be paid only to persons who had bought or built a house or an apartment, or adapted non-housing space to housing purposes. However, the Court notes that the persons who are not entitled to obtain the housing award could at any time, and still can, obtain a reimbursement of their savings accumulated on the housing account, with interest. This legislation concerning the housing savings was enacted because in the light of the general economic situation of the country and, in particular, of the economic transition initiated in 1990, it had become impossible to maintain the financing scheme within the framework of the former State-supported system of housing co-operatives as envisaged by the provisions of the Ordinance of the President of the National Bank of Poland of 1983, as it would put an excessive burden on the State budget.

The Court notes that the applicant does not contend that she has complied with the requirements attached to the housing award by the 1993 Order of the Council of Ministers, i.e. that she has bought or built a house or an apartment. It also notes that the applicant can at any time obtain the reimbursement of the savings accumulated on her housing account, with interest. Thus, the applicant was not deprived of her possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1, nor did the State exercise control over her property or violate her right to peaceful enjoyment of her possessions.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

Insofar as it is to be understood that the applicant complains that as a result of inflation her savings, accumulated on her housing savings account, lost their purchasing power, the Court is of the view that a general obligation on States to maintain the purchasing power of sums deposited with banking or financial institutions by way of a systematic indexation of savings cannot be derived from Article 1 of Protocol No. 1 (see Eur. Comm. HR, no. 8724/79, Dec. 6.03.1980, D. R. 20, p. 226).

Insofar as the applicant's complaint can be understood as relating to the fact that as a result of the reduction of the scope of guarantees offered by the State to persons possessing housing savings accounts, she cannot now become an owner of a house for which she had been saving, the Court recalls that Article 1 of Protocol No. 1 does not recognise any right to become the owner of property (Eur. Comm. of H. R., no. 11628/85, Dec. 9.5.1986, D.R. 47, p. 270). The Court finally recalls the Convention organs case-law according to which a right to purchase housing within the framework of the State-supported housing co-operative scheme in Poland cannot be derived from this provision (see Eur. Comm. HR, no. 25696/94, Dec. 10.9.1997, unpublished).

It follows that this part of the application is incompatible *ratione materiae* with the Convention within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President