CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DRAFT DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32725/96
by Stefan SCISLOSKI
against Poland

The European Court of Human Rights (Third Section), sitting on 7 December 1999 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr W. Fuhrmann,
Mr K. Jungwiert,
Mr K. Traja,
Mr M. Ugrekhelidze, *judges*,
and Mrs S. Dollé, *Section Registrar*;

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

Having regard to the above application on 8 September 1995 and registered on 22 August 1996 under file no. 32725/96;

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, living in Ciębłowice Duże, Poland.

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

A. Particular circumstances of the case

On 21 November 1988 the Tomaszów Mazowiecki District Prosecutor conditionally discontinued criminal proceedings against the applicant instituted on suspicion of his having constructed a building on his farm contrary to the terms of a building permit he had received, considering that the applicant's offence was of minor importance and that it was not justified to proceed further.

On 29 December 1988 the Tomaszów Mazowiecki municipality ordered the applicant to stay the construction works, to draw up an inventory of the works carried out to date and to request the municipality to give an administrative decision allowing for the works to be continued. The municipal authority considered that the applicant had failed to comply with the terms of the building permit in that he had changed the placement of the building on the plot, changed the dimensions of the building, had a basement constructed and had added windows and doors not provided for by the permit.

The applicant's neighbour E.K. appealed against this decision.

On 21 January 1989 the municipal office inspected the construction site. On 21 March 1989 the Piotrków Trybunalski Regional Office set the decision of 29 December 1988 aside and ordered that the case be reconsidered. The administrative authority was of the view that the applicable legal provisions required that a building intended to serve for husbandry purposes should be located at least 15 metres from the nearest well. Following the changes effected by the applicant in relation to the building permit, the building was to be situated 9,5 metres from a well located on the adjacent plot of E.K. Moreover, the applicant had enlarged the building and it was planned that it would serve, *inter alia*, as a pigsty for 30 pigs, instead of 15 as foreseen by the permit. Thus, it was necessary to hold an administrative hearing in order to establish whether the nuisance

which these changes could cause to his neighbours would be within the limits prescribed by the construction laws.

On 5 May 1989 the Tomaszów Mazowiecki municipality ordered the applicant to partially demolish the building, to bring it into conformity with the original building permit, and to ensure that the distance between the part of the building designed for husbandry and the well on the adjacent plot would be not less than 15 metres.

The applicant appealed. On 8 July 1989 the Tomaszów Mazowiecki Regional Office upheld the decision, considering that it was in conformity with the law.

On 26 September 1989, the Supreme Administrative Court refused to grant the applicant retrospective leave to appeal against this decision.

Apparently the proceedings were reopened later. On 5 March 1991 the Minister of Construction again ordered that the building be demolished. On 6 December 1991 the Supreme Administrative Court upheld this decision.

On 23 May 1990, 14 February 1994, 8 April 1994 and 17 January 1995, the Tomaszów Mazowiecki District Office imposed fines on the applicant, in order to compel him to demolish part of the building, in accordance with the decision of 5 May 1989. On 3 October 1994 the Tomaszów Mazowiecki Administrative Offences Board also imposed a fine on the applicant for the regulatory offence of failure to comply with an administrative decision.

On 20 January 1995 the Tomaszów Mazowiecki District Office issued an injunction, authorising an outside company to demolish the applicant's building, at the applicant’s expense.

The applicant lodged a complaint concerning the enforcement decision with the Regional Office in Piotrków Trybunalski. On 20 February 1995 the decision under appeal was upheld by the Piotrków Trybunalski Regional Office, which first took into consideration the applicant’s failure to comply with the demolition order of 1989. The authority further considered that in view of the fact that the administrative enforcement proceedings had been pending for a long time and that the applicant had not taken any steps to regularise his situation, the administrative authority was justified in ordering the demolition by an authorised company, as provided by the Law on Administrative Enforcement of 1966.

The applicant lodged an appeal with the Supreme Administrative Court. On 8 August 1995 the Court refused to entertain the applicant's appeal, considering that under Article 196 § 1 of the Code of Administrative Procedure no appeal to the court lay against an injunction ordering an enforcement of a non-pecuniary administrative obligation, which the party to the proceedings refused to carry out.

B. Relevant domestic law

1. Judicial review of administrative decisions

Article 196 § 1 of the Code of Administrative Procedure, as applicable at the relevant time, provided that an appeal could be lodged with the Supreme Administrative Court against a second-instance administrative decision on the merits on the ground that the decision was not in conformity with the law.

Article 207 § 2 states that the Court could set the decision aside wholly or in part if it established that the decision was issued in breach of substantive law, that the proceedings leading to the decision were flawed with a deficiency which led to the decision being null and void, or if such procedural shortcomings had occurred in the proceedings leading to the decision which would justify their reopening.

2. Enforcement of administrative decisions

Chapter III of the Administrative Enforcement Act of 1966 (hereafter “the Act”) sets out the principles of administrative enforcement concerning non-pecuniary obligations. Provisions relating to enforcement by way of imposing fines are contained in Part 2, whereas those concerning injunctions to carry out the obligations on behalf and at the expense of the parties to the proceedings are contained in Part 3.

Article 119 § 1 of the Act provides that a fine can be imposed in order to compel a person to comply with an obligation to bear or to desist from certain acts, or to carry out certain acts, particularly acts which, due to their nature, cannot be carried out by other persons. Such fines can be imposed repeatedly.

Pursuant to Article 127 of the Act, an injunction to carry out an administrative obligation can be issued when the administrative enforcement proceedings are being conducted in respect of a non-pecuniary obligation which can be carried out on behalf of the party and at its expense.

The person against whom administrative enforcement proceedings are being conducted is entitled to lodge a complaint against the decisions given in such proceedings with the organ conducting the proceedings.

3. Relevant provisions of the Law on Construction

Article 48 of the Law on Construction of 1974 (repeated in the same form in the Law on Construction of 1994, which entered into force on 10 January 1995) provided, insofar as relevant:

> "The competent organ shall … order that a building, or part of a building, be demolished if it is under construction or has been constructed without an appropriate permit or notification thereof, or in breach of the terms of the permit…"

COMPLAINTS

The applicant complains under Articles 6 of the Convention that the proceedings in his case did not comply with the requirements of a fair hearing in that the Supreme Administrative Court refused, on 8 August 1995, to examine whether the decision of 5 May 1989 was lawful and well-founded.

The applicant further complains under Article 1 of Protocol No. 1 to the Convention that the decisions deprived him of the peaceful enjoyment of his possessions, and that the destruction of the building would deprive him of a roof over his head and ruin him financially.

The applicant also invokes Article 14 of the Convention.

THE LAW

1. The Court first recalls that Poland recognised the competence of the European Commission of Human Rights 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". According to Article 6 of Protocol No. 11 this limitation shall remain valid for the jurisdiction of the Court under that Protocol. The Court further notes that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. The Court observes that the applicant's complaints in part relate to events preceding these dates. It follows that this part of the application is outside the

competence *ratione temporis* of the Court. In particular, the Court lacks jurisdiction to examine whether the administrative decision of 5 May 1989, by which the applicant was ordered to demolish part of the building in order to conform to the building permit, and which was upheld by the second-instance administrative authority on 8 July 1989, was compatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

It follows that this part of the application is inadmissible as being incompatible with the provisions of the Convention within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains under Article 6 of the Convention that the proceedings in his case did not comply with the requirements of a fair hearing as the Supreme Administrative Court, in its decision of 8 August 1995, refused to examine whether the 1989 decisions were lawful and justified.

The Court notes that the Supreme Administrative Court rejected the applicant's appeal against the injunction, ordering an authorised company to carry out the administrative decision with which the applicant had refused to comply, for lack of jurisdiction. However, the Court observes that the applicant was not deprived of access to a court competent to carry out a judicial review of the contested decisions on the merits because it was open to him to lodge an appeal with the Supreme Administrative Court against the decisions of 5 May 1989 and 8 July 1989. The applicant failed to do so within the time-limit provided for by law. Nevertheless, his case was later again examined by that Court and his appeal was dismissed on 6 December 1991.

In these circumstances, the Court concludes that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicant further complains under Article 1 of Protocol No. 1 to the Convention that the contested decisions deprived him of the peaceful enjoyment of his possessions.

Article 1 of Protocol No. 1 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."

The Court notes, having regard to the temporal limitation of its jurisdiction referred to above, that it is competent to examine this complaint insofar as it relates to the decisions given in the course of the administrative enforcement proceedings. Thus, the Court can examine the compatibility with Article 1 of Protocol No. 1 of the decision of the Tomaszów Mazowiecki District Office of 17 January 1995 by which it imposed a fine on the applicant in order to compel him to demolish part of the building. The Court can also examine the applicant's complaint in respect of the injunction of 20 January 1995, issued by the Tomaszów Mazowiecki District Office, enforcing the demolition with the assistance of an authorised company at the applicant's expense.

The Court first considers that these enforcement measures of 17 and 20 January 1995 constituted an interference with the applicant's property rights within the meaning of the second paragraph of Article 1 of Protocol No. 1.

The Court must therefore examine whether the interference was justified. In this respect, it recalls that the Convention provision at issue requires that the interference with a person's peaceful enjoyment of possessions is lawful and serves a legitimate aim (see the Fredin v. Sweden judgment of 18 February 1991, Series A no. 192, pp. 16-17, §§ 48-50). Moreover, the interference must be proportionate, achieving a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (the Fredin judgment, loc. cit., p. 17, § 51; the Agosi v. the United Kingdom judgment of 24 October 1986, Series A. no. 108, p. 18, § 52).

As regards the lawfulness of the interference, the Court observes that in the present case the decision of 17 January 1995 to impose a fine on the applicant was given pursuant to the provisions of Chapter III, Part 2 of the Administrative Enforcement Act, in particular its Article 119. As regards the injunction of 20 January 1995, it was given in accordance with Chapter III, Part 3 of the same Act, and in particular its Article 127. Therefore the Court is satisfied that these decisions were lawful.

As regards the aim of the interference under examination, the Court observes that the contested decisions were issued in order to ensure the applicant's compliance with a final and binding administrative decision. The

Court therefore finds that the interference was in the interests of securing the fulfilment of an obligation provided for by law and consequently pursued a legitimate aim.

The Court recalls that, in determining whether a fair balance has been struck between the general and private interests, regard must be had, among other factors, to the behaviour of the owner of the property, including the degree of fault or care which he or she has displayed (the Agosi judgment, loc. cit., § 54, p. 19).

In the present case, the applicant had a building permit with which he failed to comply, in that he made certain changes to the building, and in particular enlarged its dimensions. As a result, the distance between the new building (being used for the purposes of animal husbandry) was shorter than that prescribed by the construction laws. The Court further notes that the decision ordering partial demolition was issued in 1989 and the applicant was then given ample time to comply. However, as the applicant persisted in his refusal to take any appropriate steps, in 1995 the authorities, in the context of administrative enforcement proceedings, issued the partial demolition injunction. Thus the injunction clearly resulted from the applicant's failure to comply with his legal obligations, which constituted a significant fault solely attributable to him.

In the light of the above considerations, the Court finds that interference with the applicant's property rights was justified. It follows that this part of the application is inadmissible as being manifestly ill-founded founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

4. The applicant also invokes Article 14 of the Convention.

Article 14 of the Convention prohibits discrimination in the securement of Convention rights and freedoms. Thereby any difference in treatment lacking a reasonable and objective basis as regards a Convention right may raise an issue under this provision (Gaygusuz v Austria judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1142, §42).

The Court considers, in the light of its above findings regarding the absence of disproportionality and arbitrariness in the observance of the applicant's rights under Article 1 of Protocol No. 1 to the Convention, that the present complaint is unsubstantiated and does not disclose any appearance of a violation of Article 14 of the Convention. It follows that this complaint is

also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

N. Bratza
President